LE PROTECTEUR DU CITOYEN

Assemblée nationale
Québec

Québec Ombudsman
28th Annual Report, 1997-98

ERRATUM

Chapter 4 - A Few Figures

An error was inadvertently included in Table 5 on page 165 listing the various departments and agencies that were the subject of inquiries in 1997-98.

Figures for Tourisme Québec were incorrectly attributed to the Institut de tourisme et d'hôtellerie du Québec. The totals should have been counted under the Ministère de l'Industrie, du Commerce, de la Science et de la Technologie.

The following lines of Table 5 should read as follows:

Table 5

Departments and Agencies That Were the Subject of Inquiries in 1997-98

	Unsubstantiated Complaints	Substantiated Complaints	Other Inquiries	Ongoing	Total
Departments					
Industrie, Commerce, Science et Technologie	3	-	3	4	10
Institutions					
Institut de tourisme et d'hôtellerie du Québec	-	-	0	1	1

103-03512/

QUÉBEC OMBUDSMAN

Refocusing Government on Citizen's Rights and Expectations

28th Annual Report 1997-98

The masculine form is used in this text to designate both men and women.

Le texte original français est disponible sur demande.

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Québec, November 16, 1998

Mr. Jean-Pierre Charbonneau
The Speaker of the National Assembly
Hôtel du Parlement
Québec (Québec) G1A 1A4

Mr. Speaker:

I have the honor of presenting you with the *28th Annual Report of the Québec Ombudsman* entitled "Refocusing Government on Citizens' Rights and Expectations" and covering the period of April 1, 1997, to March 31, 1998.

Restructuring, changes to government programs, and budget and staff cuts must be accompanied by a renewed focus on citizens' rights and the elimination of mismanagement in the public service. Efforts to eliminate the deficit must go hand-in-hand with the fight to end exclusion.

Yours sincerely,

Daniel Jacoby, Lawyer
Québec Ombudsman

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Comments and Reflections

by the

Québec Ombudsman

CITIZENS, DEMOCRACY AND THE RULE OF LAW

Public Satisfaction and the Government

Because the Québec Ombudsman's duties, by their very nature, place him at the heart of the relationship between government and the citizenry, he is particularly well placed to observe government life, its tensions, and their impact on individuals and groups. Such tensions are normal, given that the context of government is in constant evolution. However, this requires a constant search for balance.

As the saying goes, "no news is good news". Indeed, in many areas of government intervention, thousands of actions are taken and countless decisions made every day by responsible civil servants who do their jobs competently, quickly and respectfully, and who are attentive to citizens' needs. These actions and decisions are well received by the public, or at least well understood, when it is kept fully informed. Doing so is in the public interest. Obviously, the government would like its good news to make headlines a bit more often, but this is not easy with the public service, whose successes tend to be of the "no news" variety.

Moreover, although surveys or other measurement techniques may be of some comfort in allowing the government to affirm general public satisfaction ratings of 70%, 80% or 90% for given measures, public management cannot be based on "the rule of the majority." As long as there is cause for dissatisfaction, the government must assume its responsibilities toward each and every citizen. It is notably the role of the Québec Ombudsman to remind public officials of this duty.

Citizens' Expectations of Government

In every state, populations have clearly expressed the will to find a way of living together within a given territory and to interact with their neighbors. Humans are fundamentally social beings. Not only are they conscious that they must work together for their very survival, they are also aware that they cannot progress alone, no more than they can act alone to influence their community or the society in which they live. This is why people create states and choose people to represent them. These representatives are given the task of proposing a vision for society that corresponds to the people's circumstances, establishing common services in the public interest, spreading the cost among the entire community and, lastly, maintaining good relationships with other societies.

This by no means indicates that citizens have abdicated their individuality and given up their say in decision making, or that their idea of solidarity and sharing has been reduced to dividing costs equally between all community members regardless of their capacity to pay. Citizens want to see themselves reflected in the vision and the orientations of a government that serves individuals, yet acts in the general interest of the public at large. They also want a role in defining the public interest, even though they understand that the public interest cannot always and in every way correspond to their own. Lastly, when their rights are violated or they are prejudiced by the enforcement—even legitimate—of a law or regulation, they want to be able to count on a government that, while seeking

the greatest possible coherence, remains capable of listening, repairing wrongs, and preventing injustices to certain citizens. These expectations are entirely legitimate in a democratic society.

The Erosion of Rights

By definition, the office of the Québec Ombudsman is an institution born of democracy. The Ombudsman acts as a counterbalance when the equilibrium between collective and individual rights is upset.

I have realized something from my observations of government/citizen relationships and from what I have addressed since national economies globalized, heard daily from those who suffer the consequences and read in various sources: the Social Contract drawn up since the introduction of the Charters of rights has in some ways gone stagnant, and even been mothballed in certain respects. This is the case when the government deliberately delays the introduction of a law approved in Parliament (see page 18 of the introduction). I hope that we are nearing the end of a cycle and that the pendulum will soon swing the other way.

Instances of impoverishment, exclusion and the violation of basic rights and liberties are real, and not exclusive to Québec. My involvement with the national and international ombudsmen's communities has led me to travel to various regions of the world. What I see and hear too often is that money is "the heart of the matter" and that it has become the yardstick of success. Those who fail to make the financial grade are often left out in the cold or ignored. Here, as in the other industrialized nations where the "Welfare State" led to the redistribution of wealth, the middle class is weakening, and we are gradually taking back from society's most needy the very things previously granted to ensure they enjoyed an acceptable standard of living. By doing so, we decrease the capacity of citizens to exercise the rights and freedoms so vital to democracy. Much of the wealth diverted ends up in a certain developing countries, but does not by any means improve local standards of living or further the cause of democracy. Yet wasn't improving the situation of these populations one of our objectives? A simple visit, even when one is shown only the best, is enough to see that these populations still live in conditions of extreme poverty.

Essential Human Dignity

An institution like the Québec Ombudsman's office is helpless to influence the global trends that cause such turbulence in our society. On the other hand, not only can he speak out, but he must speak out, to preserve the dignity of citizens and their capacity to protest against the unacceptable. People must preserve their means to participate in the necessary redrawing of the social contract, not only in light of developments elsewhere, but also according to the values they hold dear. They are sometimes encouraged to give up. Yet the sole hope for their future in the "global village" lies in the ability of societies to take things in hand and continue the untiring search for solutions both fairer and more equitable for society as a whole.

The Advantages of Democracy

Democracy, although not the perfect political regime, has great advantages over other forms of power, since it offers the governed, through representation or participation, the freedom to choose between various political parties without limiting their contribution to the simple act of voting. Indeed, it offers much more than that by giving citizens the right, between elections, to express their views, criticize the government, complain about its decisions, and call for reductions in disparities and systemic barriers between various segments of the population.

To make all of this possible, democratic values must permeate all laws, with the ultimate goal of improving the conditions of citizenship—in the widest sense of the term—and broad-based and natural respect for the law. International conventions, constitutions and democratically adopted charters all recognize and legitimize the rights and liberties citizens may invoke to counter arbitrary government decisions and actions. These instruments help foster a fairer balance between government and the citizenry and contribute to the development of social rights, even if these rights are not yet fully enforceable.

The Citizen's Right to Nonexclusion and Personal Development

Despite the fiftieth anniversary of the *Declaration of Human Rights*, the right to equality and its corollary, the right to nonexclusion, is perhaps the most difficult right to define and adjust. Even though our legal system affirms that all citizens are equal, equality remains an elusive ideal. People are not all born equal; they do not all have the same opportunities or means to influence the course of events. It is utopian to believe they will become equal. However, we must seek to provide all citizens with the instruments they need to achieve their full potential for development.

The road to democracy is narrow and full of pitfalls. Although strengthened human rights protection has removed some of the bumps, we are still a long way from a "human rights highway," since rights and freedoms have yet to be fully linked to the economic development of citizens. Despite current frictions, there is still room for hope since as early as 1986, the United Nations General Assembly, in its *Declaration on the Right to Development*, associated economic, social, cultural and political rights for the first time as forming part of a whole.

Together, we must use our energies to integrate the principles laid out in the *Declaration on the Right to Development* and take measures to put them into practice. Governments around the world took a big step in his direction by signing the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*.

However, I do not believe that the responsibility for ensuring society and the individuals that make it up realize their full development potential lies solely with the state, the business community, charitable organizations or individuals. The issue concerns all of us and no one, either here or elsewhere, must walk away or, for that matter, be left out of the picture. Solutions will emerge from the will and ability of each of us to explore new pathways to solidarity as we sense our personal responsibility for preserving the values, rules and tools that democracy has bequeathed to us for the benefit of future generations.

THE YEAR IN REVIEW

In 1997–98, the Québec Ombudsman received 22,323 complaints and requests for assistance from individuals who felt that their rights had been violated by one of the government's 85 departments and organizations. He also received 5,347 requests for consultation regarding public services where he has no legal jurisdiction to investigate. Of the 22,323 complaints filed, the Ombudsman investigated 8,571—a record number.

In over 30% of cases, the Ombudsman concluded that citizens were right to complain and asked the departments or organizations concerned to rectify the situation. In 91% of these cases, not only was the Québec Ombudsman's intervention accepted, but his recommendation was followed as well.

The primary cause of grievance—24% of substantiated complaints—was the unwarranted length of time taken by departments and organizations to provide services. Unreasonable delays in the public service are a source of prejudice and frustration, and constitute a denial of justice. A total of 18% of cases were due to problems with access to services, while an additional 16% arose from unreasonable, unfair or inequitable decisions.

Usually five to seven departments and organizations account for over 75% of all complaints, and that was the case this year: the Ministère de l'Emploi et de la Solidarité accounted for 4,313 cases, followed by the Ministère du Revenu at 3,075 (compared to 1,917 cases last year), the Ministère de la Sécurité publique at 2,960, the Commission de la santé et de la sécurité au travail with 1,583, the Société de l'assurance automobile du Québec at 1,430, and the Régime d'aide financière aux étudiants at 1,046. Some 61 other departments and organizations were also the subject of complaints.

In all of these cases, complaints were often related to reforms introduced in previous years and the budget and staff cuts that had resulted: income security, prison overpopulation and closings, and problems with student loans combined with administrative rigidity on the part of the Ministère de l'Éducation.

NOT ALL CITIZENS CAN HAVE THEIR COMPLAINTS IMPARTIALLY INVESTIGATED BY THE QUÉBEC OMBUDSMAN

Although the Québec Ombudsman lacks the power to intervene with health care establishments, including regional health boards, he received many more health-related complaints than the government commissioner with this jurisdiction. The Ombudsman cannot act on these complaints, but under the law, the commissioner has neither the Ombudsman's independence nor effectiveness (see next point of the Introduction). Moreover, the Ombudsman has no jurisdiction over decisions made by school boards or cegeps in the education field, nor for that matter by municipal authorities. Altogether, complaints in these areas represented 2,584 of the 22,323 received: i.e., in

over 11% of cases, citizens had no recourse to a neutral and impartial investigator answering to the National Assembly instead of the government.

Citizens can turn to the Québec Ombudsman when they believe they have been wronged by any of the departments or organizations employing the 50,000-odd civil servants appointed under the *Public Service Act*. But when it comes to the many other public services staffed by employees on the government payroll, recourse is often flawed, ill-suited or quite simply nonexistent. And these organizations and agencies are not subject to the Ombudsman's power of scrutiny. How is justice rendered in Québec for citizens who question government decisions, policies or procedures? Only they can say. When will the government follow the example set by most other democratic countries? When, on behalf of the public, will it grant the Québec Ombudsman a right to monitor public organizations as far reaching as the one accorded public authorities like the Auditor General, the Commission d'accès à l'information or the Commission des droits de la personne et des droits de la jeunesse, which are generally not limited in the exercise of their mandates by the legal status of organizations that have been the subject of complaints or verification?

This anachronistic situation compromises the public's right to equality in the handling of grievances, and also imperils democratic rights such as that of having administrative decisions reviewed by an impartial organization. Unquestionably, complaints offices within the various departments and organizations do play an important role—indeed, I was the one responsible for having these services set up. However, because they answer to government authorities, they no not have the Québec Ombudsman's maneuvering room, even though most have developed considerable autonomy and truly work for the public's welfare.

The Health and Social Services Complaints Commissioner and the Québec Ombudsman

By way of example, I believe that a citizen complaining about decisions or delays in a health care establishment cannot obtain the same service he or she would obtain with a complaint about a department or organization over which the Québec Ombudsman has jurisdiction. Indeed, a comparison of the Ombudsman and the Health and Social Services Complaints Commissioner reveals certain differences (see table on next page).

The Complaints Commissioner and the Québec Ombudsman With Regard to the Executive Branch

It is possible for the Complaints Commissioner to be appointed for less than 5 years, which can compromise his or her neutrality and effectiveness. What's more, as a government appointee who reports to the minister, the commissioner is part of the government and not at arm's length like the Québec Ombudsman, who reports directly to the National Assembly. Citizens who believed they have been wronged by the actions or omissions of a health care facility must therefore complain to a person who belongs to the government responsible for determining health care budgets, and who reports to the Minister of Health and Social Services, the person responsible for determining health care orientations. This hardly constitutes impartial recourse to an independent authority. The office of the Complaints Commissioner is therefore an internal conflict resolution mechanism that is part of the executive and the administration. The Ombudsman's independence makes him a neutral and impartial outside resource.

COMPARATIVE TABLE

Québec Ombudsman (R.S.Q., Chapter P–32)	Complaints Commissioner (Bill 404; 1998, Chapter 39)
Citizens can address themselves directly to the Ombudsman	Citizens must first address themselves to the health care facility, then the regional health board, and subsequently to the commissioner
Complaints may be verbal	Complaints must be in writing
The Ombudsman assists the plaintiff in formulating his complaint	Idem
Citizens may complain within one year of the event. They may even complain later if exceptional circumstances so justify	The commissioner may refuse to investigate a complaint if he or she feels that the time elapsed between the events at the origin of the complaint and the filing of the complaint makes investigation impossible
The Ombudsman must keep complaints confidential	No provision
The Ombudsman can make any type of recommendation, including intervening to change practices, directives, regulations and laws	The commissioner may communicate his or her viewpoint to the Minister of Health and Social Services
The Ombudsman may at any time go directly to the government if his recommendation is not followed	The commissioner reports only to the minister
The Ombudsman can, ultimately, make recommendations to the National Assembly	Idem
The Ombudsman is appointed by a two thirds majority of the National Assembly	The commissioner is appointed by the government, without consulting the National Assembly
The Ombudsman is appointed for five years; his term is renewable	The commissioner is appointed for a maximum five-year term
He can only be dismissed by the National Assembly	The commissioner can be dismissed by the government without consulting the National Assembly
The Ombudsman selects and appoints his own staff	The commissioner is subject to the *Public Service Act* for staffing
The Ombudsman has only one hat to wear	No provision
The Ombudsman reports to the National Assembly	The commissioner reports to the minister, who tables the report in the National Assembly
The Ombudsman enjoys certain immunities to preserve his independence	No provisions
The Ombudsman can call on public opinion during or after an investigation	The commissioner cannot

With Regard to Freedom of Expression and Public Opinion

The Québec Ombudsman may call upon public opinion if he deems it in the public interest. His freedom of opinion and expression is recognized, which is not the case of the commissioner. The Ombudsman can therefore denounce unacceptable situations on behalf of the public. The people have a right to know.

With Regard to the Flexibility of the Complaint Process

Complaining to the Complaints Commissioner is a formal process: no written submission, no complaint. Plaintiffs must also have completed two preliminary steps prior to contacting the commissioner. What happens in more urgent situations?

With Regard to the Power to Intervene

The Québec Ombudsman ultimately makes recommendations to the National Assembly. The Complaints Commissioner issues advisory opinions to the minister.

The situation has changed radically since the early 1990s when the government created the position of Complaints Commissioner. Today, because of the changes to the health care system, citizens seeking to have prejudicial decisions altered must have recourse to an independent and impartial authority responsible to neither the executive nor the administration, as is the case in most countries. As part of Bill 404, the Québec Ombudsman therefore suggested jurisdiction over the network be granted him in two stages: first over complaints involving the most vulnerable— i.e., those requiring special care due to their state of health (multitrauma cases, the elderly, the intellectually handicapped, people with mental health problems)—and second, over complaints from all system users. The minister and his staff replied as follows:

> "...It is undesirable to set up a complaint system based on user characteristics. It is less discriminatory for all health and social service users to have access to a single body at the local, regional and provincial level—the complaint processing system of the Ministère de la Santé et des Services sociaux".

Is it discriminatory to pay special attention to society's most vulnerable members? Is it discriminatory for a vulnerable person to have access to the Québec Ombudsman?

The Ombudsman also made 19 recommendations[1] to reinforce the independence and powers of the Complaints Commissioner in the interest of health care users. Unfortunately, none of them were acted upon.

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1 See Part I.

AMONG ISSUES OF CONCERN, THE QUÉBEC OMBUDSMAN HAS NOTED THAT THE GOVERNMENT HAS DELAYED FOR NO VALID REASON THE IMPLEMENTATION OF SOCIAL LEGISLATION PASSED BY THE NATIONAL ASSEMBLY

The *Act respecting assistance and compensation for victims of crime* (1993, Chap. 54) was unanimously passed by the National Assembly on December 10, 1993. The act overhauls the crime victim compensation scheme and is largely modeled after the one for traffic accident victims. Section 226 of the act gives the government the authority to set a date for its coming into effect.

Yet, five years later, the government has yet to issue the order-in-council required to bring the act into force, much to the despair of those concerned. They consider the current crime victim compensation scheme based on the *Act respecting industrial accidents* as it existed prior to the passage of the *Act respecting industrial accidents and occupational diseases* of 1985 to be totally obsolete.

Legislative sovereignty is compromised when a social law of such significance remains in limbo because the executive branch refuses to give it force of law.

Parliament has few means at its disposal to encourage ministers or the government to speed the issue of orders-in-council bringing legislative measures into effect. The influence of parliamentary committees or elected representatives during question period has little effect in this regard.

In the interest of justice for crime victims, the Québec Ombudsman considers that the government must either implement the new compensation scheme adopted in 1993 or submit an alternative without further delay so as to replace the current scheme, which was already judged to be outdated in 1993. Furthermore, the government should take measures to better publicize the plan so that all victims are aware of it.

WHEN WILL WE SEE A GENERAL POLICY OF SERVICE TO CITIZENS?

To have quality public services, the government must first recognize the dignity of citizens. Such recognition underpins the rule of law, our search for balance between tensions and strengths, and the strengthening of human rights.

Year in, year out, some 30% of the complaints handled by the Québec Ombudsman turn out to be justified, a figure equal to over 50% in other countries using different statistical methods.

Public authorities have no overall policy on serving the public. I believe such a policy is the missing link. The government reformed the administrative justice system to establish clearer obligations for the approximately 50,000 civil servants working in departments and agencies governed

by the *Public Service Act*. But there is no general policy on quality of service and decision making for the hundreds of thousands of public sector employees not covered by the law. They strive in good faith to do their best, but lack access to tools for improving the quality of the services they offer.

Statistics and government concerns show that there is little will to refocus administrative energies on the needs of the citizen. Independent service units have been created primarily for reasons of convenience and operational autonomy—which are worthy goals—but they are not a response to public expectations regarding the quality of public services.

Here, then, are my proposals:

First, I believe that 5% of all savings derived from budget or staff cuts should be invested in improving the quality of service, notably through training, professional development and the creation of suitable tools.

The government should also draw up a charter of citizen's rights with respect to government, a charter also laying out the corresponding duties of the citizen. It could be adopted after consultation with the public, the Québec Ombudsman and other public and private rights protection organizations.

In addition, the Québec Ombudsman should be available in any matter involving the government.

Questions need to asked about the dilution of citizen's rights caused by the proliferation of public organizations charged with their protection. Is it necessary to maintain parallel structures like the Québec Ombudsman's office, the Commission des droits de la personne et des droits de la jeunesse, the Commission d'accès à l'information et de la protection des renseignements personnels, the Health Commissioner, the Police Ethics Commissioner to name but a few? More organizations does not mean better rights protection. But every time the issue gets raised or working groups produce reports, nothing happens and no one can say why.

Every department and agency wants to preserve its own "style" of rights protection and every decentralized structure (education and health) wants to maintain its autonomy. They all point to their specificity and particularities to justify their positions, rather than citizens' expectations with regard to public services. When the Commission des droits de la personne and the Commission des droits de la jeunesse were merged, it was a cost-cutting move; when the Health Commissioner was maintained, it was a way for the department to keep things "in the family." Citizens are increasingly frustrated to have to deal with a multitude of different organizations whose philosophies, procedures and reaction times may vary widely. The notion of one-stop service did not emerge out of thin air, but in response to actual needs. If one-stop service is seen as important for financial considerations, as recent restructuring shows, why shouldn't it be the same for rights protection? Throughout the broader public sector, citizens want the same thing, no matter which department or agency they are dealing with: to be treated fairly by a government that serves them in a way that is responsible and sufficiently compassionate to counterbalance the effects of bureaucracy and take into account

individual needs. Unfortunately, monopolistic structures and vested interests paralyze efforts in this direction.

Nonetheless, I am pleased to note that a number of departments and top officials, not to mention their employees, are making significant and praiseworthy efforts to put citizens first. They include the Ministère du Revenu, the Régie des rentes and the Ministère de l'Emploi et de la Solidarité to name but a few. Are their sporadic efforts sustainable? Given the highs and lows of government, anything can be called into question anytime. This is why it is vital to move ahead with a Charter of Citizen's Rights and Duties coupled with an implementation policy spread over several years.

THE QUÉBEC OMBUDSMAN'S *SOCIAL CONTRACT* AND THE *ACT RESPECTING ADMINISTRATIVE JUSTICE*

The Québec Ombudsman is part of the government's arsenal of conflict resolution mechanisms. Traditionally, he offers administrative recourse on a case-by-case basis to provide specific solutions to problems experienced by the public. However, many of the problems recur year after year from one organization to another, and are often identical or at least similar in nature: lack of information, difficulty in obtaining government services, unfounded decisions, violation of basic rights, unfair decisions, negligence, abuse of power. So the question arises: Must the ombudsman act solely as a disciplinarian, resolving only individual cases? Or must he also become an agent of change by proposing lasting changes after identifying the underlying causes of dysfunction? In my opinion, the ombudsman's impact will always be limited if he only solves problems on an individual basis.

In 1994, the Québec Ombudsman therefore drew up the *Social Contract*, 56 rules designed to improve government relations with the public and avoid arbitrary actions and decisions[2]. I was thus extremely pleased when the Premier himself stood before the Institute of Public Administration and linked public management to the Social Contract:

> "Recently, the Québec Ombudsman's latest Annual Report, with its special emphasis on how to improve the quality of service to the public, was brought to my attention. I found it contained excellent suggestions, which I invite you to follow. During this period of budgetary restrictions, particular attention must be paid to this aspect of public management if citizens are not to be the first to feel cuts in services, or a decline in the quality of services provided. I am confident that you will be able to reconcile program streamlining with the maintenance of quality services for the public".

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2 See Annex.

The Drafting of the Social Contract

During the Contract's drafting stages, I paid special attention to what I call the true expression of the law, factors contributing to civil service disempowerment, necessary harmonization of government programs, citizen-government relations, and public expectations.

Laws Find Their True Expression in the Hands of the Civil Service

The government possesses enormous authority in the crafting and enforcement of laws, as well as in the implementation of government programs. Under parliamentary democracy, all legislation is publicly debated by the political parties represented in parliament. But where does a law find its true expression? Is it in the principles and solutions it advocates? It is in its implementation that a law takes on its true colors. In fact, it is through the civil service that norms, procedures, directives, administrative practices and manuals for the interpretation and application of the law—its directions for use so to speak—are established. This is what we can call the *hidden face* of the law.

Design of these instruments is entrusted to the civil service because the division of labor and expertise requires it; and the power of the civil service grows to the extent that these instruments are complex, often requiring the use of technology, and sometimes understood only by a small group of initiates. This vital step in the implementation of laws creates a void in the democratic process. In fact, the population, elected representatives and government ministers have great difficulty exercising direct control over the establishment of these rules. It is the very openness of the civil service that is at issue here.

I therefore concluded that the bureaucratic process was winning out over the democratic process. I had to get at the *hidden face* of the law. I believed that a Social Contract could eventually achieve this by providing government officials with a framework for drafting and applying administrative procedures and standards.

But, my thoughts were also influenced by the prism of public service accountability.

Public Service Accountability and Factors Contributing to Disempowerment

In Western society, politicians and officials have been trying for decades to improve public services. There has been no shortage of attempts: total quality, the continuous quality approach, public service renewal and charters of citizens' rights. However, these attempts have not always had the desired effect.

Civil service accountability has become a political concern. Increasingly, senior public officials are being held to account by elected representatives. But there again, the results have been less successful than was hoped. Esoteric bureaucratic language, government department specialization, lack of real expertise among elected representatives, and the "how" that obscures the "why are all factors that significantly limit true accountability.

I believe the reason for this lies partly in the way the civil service is organized and operated. In fact, several factors inherent in the civil service produce undesirable effects. Here are a few examples:

Division of responsibilities can neutralize the search for solutions. Individual files are often divided between groups of experts, without any real coordination. This fragmentation causes delays, hinders coordination between specialists and dilutes responsibility. What can be said of a government guilty of botched program implementation when it replies that the foul-ups are the result of a faulty computer software algorithm? Who is responsible when everyone is responsible?

Excessive hierarchization can also disempower civil servants working on the front line. Employees who are in contact with the public have a lot to say about program dysfunction and the loss of rights. Who listens to them? Which mechanisms enable them to voice their observations and proposed solutions higher up the pyramid of power? Will their careers suffer if they speak out? Are their ideas a threat to their superiors? Hierarchy can also have a perverse effect: if there are too many levels, decision makers at the top may lack sufficient information to make informed decisions.

Furthermore, the government does not always give civil servants free rein in their actions. How can civil servants take initiative if they are not allowed to make mistakes? Faced with unexpected problems, civil servants are often powerless to act for want of policy guidelines. And existing guidelines allow no room to maneuver. For an individual grappling with the government bureaucracy, this effectively means "abandon all hope ye whose cases fall outside these guidelines". As a result, citizens may lose basic rights, often without even realizing it, due to a bureaucracy which provides no room for imagination. The civil service's right to make mistakes needs to be recognized: it can only lead to improvement, if only officials would dare...

David and Goliath: The Citizen is a Captive of the State Monopoly

I have also given some thought to relations between the governed and the governing: David and Goliath

It is now clear that citizens have grown captive of the monopoly represented by the state. Furthermore, some are vulnerable, and may feel fearful and generally uninformed about their rights.

In all fields where government manages rights and benefits, individuals are captive. In many areas, they are faced with monopolies—rarely can they seek other service providers. Dealing with government services is not bad in itself, but there is an underlying danger: since departments do not have to compete with anyone, they may neglect customer service. Too often, they tend to act unilaterally or content themselves with systems of their own creation they consider to be effective without seriously considering whether they are respecting the law and/or providing a quality service.

Citizens Are Often Vulnerable

Citizens are often at the mercy of the huge, all-powerful government apparatus. Who can afford to pay a professional to make sure their rights are respected? Not everyone benefits from legal aid, or support from a union or another human rights organization. When the government is defending its own rights or contesting a complaint, it has virtually unlimited financial, professional, legal and administrative resources at its disposal, an arsenal that has nothing in common with that available to an individual or small business.

When citizens disagree with the government, they must often confront an omnipotent structure in order to have their rights recognized. Citizens thus often feel vulnerable and inferior.

Citizens Are Fearful

Even if only to drop off an application or obtain information, many individuals are fearful about approaching government employees because they are afraid of official authority. This is especially true for immigrants from countries where government abuse of power is frequent and government reprisals are common. Others are fearful because life has not always been kind to them or because they are more familiar with the political customs of an earlier era. This fear often manifests itself as uncertainty, as is the case with elderly people. Lastly, some are fearful because they have had unpleasant experiences with the civil service in the past.

Citizens Are Uninformed or Do Not Understand

In addition to being captive, sometimes vulnerable, and often fearful, numerous citizens are poorly informed; they generally do not understand the workings and policies of the government. They feel that government knowledge, expertise and jargon will always be over their heads and that they will never come out on top. In all these cases, the powerless and fearful who are afraid to act and the poorly informed who fail to act end up seeing their rights compromised or paralyzed. In fact, the imbalance arising from the government's monopoly position generates injustice, abuse of power and violation of basic rights (see Part 2 of the report). With the Social Contract, I sought to offset this monopoly for the benefit of the public, as well as to foster dialogue and communication with the government.

Public Expectations Regarding the Public Service

Yet another analytical prism guided me in my work: through complaints, comments from NGOs and my observance of current events, I tried to identify the legitimate expectations of the public. People want the government to truly serve them and to provide fair, responsible, and open administration that expresses a vision.

Components of the Social Contract

The Seven Rules of Openness

Openness does not only mean informing citizens about decisions that affect them and explaining government motives, but also making sure that they are understood. Openness also implies that the government clearly makes known all available recourse, including the Québec Ombudsman. In addition, it means that the government consult citizens when drawing up, implementing and making changes to programs. It means asking for their input when designing information pamphlets and forms to ensure they are understandable. It means considering secrecy as an exception to the rule of doing public business.

The Seven Rules of Accessibility

Accessibility means eliminating obstacles between individuals and government in a variety of ways: setting up more personalized reception services, especially ones that take client difficulties and language barriers into account; adapting facilities to improve accessibility for those with physical disabilities and to ensure respect for the right to privacy; adjusting business hours to social and family realities; creating one-stop service outlets to reduce administrative red tape and delays; providing telephone services that field public queries efficiently; and using automated answering services (voice mail) only to the extent that service is not negatively affected

These automated answering services have generated so many complaints from the public and government alike that I felt it necessary to develop ten guidelines for implementing phone answer technology[3].

The Seven Rules of Legal and Reasonable Behavior

Technology is one thing, the legality and reasonableness of government actions is another. Respect departmental norms. Promote and ensure respect for fundamental rights and freedoms. Make decisions that are reasonable, fair and timely. Prevent arbitrary decisions and abuse of power. Establish objective criteria to help guide discretionary decision making. Avoid narrow interpretations of the law. And provide the means to act in complete fairness when circumstances warrant.

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[3] Set up systems to meet user needs and expectations, not just to make things easier for the government. Conduct thorough studies on public needs and the nature and quantity of information required before setting up a system. Test answering systems to ensure message content and speed are suitable before making them operational. Ensure that information is appropriate, clear, precise and concise given that individual capacity to assimilate and understand information varies greatly. Avoid long, complex "menus" and multiple steps before desired information is obtained. Carry out regular spot checks and user satisfaction surveys once a system is in place. Ensure that users can quit the system at all times to talk to a resource person. Minimize waiting time if callers wish to talk to a government employee. Provide these systems free of charge. Ensure that systems can provide citizens with information on their files: general information is good, but specific information is better. Were documents sent in actually received? Has a decision been made? When will the caller's card, cheque or license be sent out? Why has there been a refusal or delay?

The Five Rules of Natural Justice

The government must avoid conflicts of interest, bias and discrimination. It must give citizens the opportunity to present their points of view. It must provide them with useful information. And it must take the initiative to help them complete their files by asking for missing information and documents. Too often, public servants who examine claims assume that all individuals are able to complete their files. It is true that citizens must take responsibility for themselves, but sometimes they lose rights by failing to properly complete their files. The government has the duty to ensure that citizens follow the right procedures when they are exercising a right. Government complexity must not end up victimizing individuals.

People often complain about the time it takes for decisions to be made. In many cases, delays result from improperly completed forms or incorrectly coded information. Government employees put such files aside without thinking of the individuals impatiently waiting for funds or a permit that they may urgently need.

The Four Rules for Planning in the Public Interest

The government sometimes forgets that laws are supposed to improve situations and eliminate unfairness. Rules and procedures must be designed for the well-being and convenience of citizens rather than for the convenience of government. To reduce programs foul-ups and flaws, resources must be allocated so that citizens are not the first or sole victims of budget or staff cuts. The dangers of poor administration must be rooted out.

The Five Rules for Bringing Services in Line with Expectations

Do we listen to the public enough? The government must conduct surveys and set up user advisory boards. It must also set up committees composed of front-line employees who deal directly with the public. These employees are a vital source of information that is too often ignored. It is generally managers who meet together to determine government requirements without truly knowing either what citizens want and need or what irritates them.

Reasons for public dissatisfaction must be taken into account to improve services. Superfluous procedures and formalities must be eliminated.

In short, improvements cannot be made in a vacuum without asking the right questions. And the right questions come more easily to attentive listeners.

The Eight Rules of Human Dignity

No one likes to be treated like a number or computer code. We must therefore humanize and personalize relationships with the public. When individuals request services or benefits, they are not asking for favors, they are exercising their rights.

Citizens must also be guided through the bureaucratic maze because they do not always know which department to go to or which employee can best answer their queries. Shuffling from building to building and floor to floor, or making eight phone calls to reach the right person, is unacceptable. Every government employee has a duty to direct citizens to the appropriate service at first contact—it is a question of common sense and respect for dignity. The public service must be synonymous with service to the public.

Lastly, if a responsible government has the duty to ensure that citizens obtain their rights, it must also prevent fraud. Controls are necessary, but they must be respectful of individual dignity. This means that investigators and auditors must first hear the version of events of the person under investigation before questioning third party sources. Controls must also respect the right to privacy. Why ask an owner to provide a copy of a lease when the investigator can obtain it from the tenant? Questioning third parties is only justified when there are serious reasons to believe that fraud has been committed by the user.

The Thirteen Rules for a More Responsible Government

This section deals with delays and quality. Too often, public managers consider delays inevitable and unimportant. However, excessive waits create expectations. If citizens are not eligible for a service, they should be informed immediately so that their case is no longer part of the workload. This leaves more time to serve others. If a decision is delayed, citizens should be informed and the promises they are made respected. In my experience, citizens who have been told that a decision will be made within a month will generally not return before the month is up; they will not tie up phone lines and will leave government employees free to do other things. Once that period is up, they have a right to complain and should be listened to.

When it comes to complaints, I often have to remind civil servants that public dissatisfaction should not be taken as mere criticism, but as an opportunity for improvement.

For the past several years, I have been asking departments and agencies to set up complaint investigation offices and to position them as far away as possible from decision making personnel in the hierarchy. I have also asked them to set up review, conciliation and mediation mechanisms as needed.

Complaints must be dealt with and improvements made with the knowledge that progress is impossible without employee cooperation. It is important to recognize work well done and give decision makers sufficient latitude to carry out their missions by allowing them room for error. Employees who are undervalued or fearful will not take initiative and will not exercise their best judgment.

This sums up the 56 rules in the Social Contract—a document that seems full of promise and rich in results. The next question that automatically comes to mind is: Has the Social Contract had

any impact? Has it been accepted and put to use by the public service? Has it led to a decrease in the number of substantiated complaints?

The Social Contract at Work

I can already see the impact of the Social Contract in departmental and agency orientations as well as in the individual actions of decision makers who work directly with the public. Here are some examples:

Creation of Complaint Investigation Offices

With the Contract in place, more and more departments and agencies—over thirty-five so far—have set up complaint investigation offices. Admittedly, not all these services are very effective; however, the majority do function well because they not only settle individual cases, but also analyze the underlying causes of dissatisfaction with an eye to improving procedures. My staff works in collaboration with these offices in resolving numerous problems by contributing a more objective, outside point of view that helps balance their program-specific expertise. Other departments and agencies have simplified their forms, made their information leaflets more accessible and clarified their administrative policies.

Impact on the Setup of User Advisory Boards, Information to the Public and the Drafting of "Client Service Charters"

A few departments have set up panels of users to fill them in quickly on foul-ups, flaws and injustices in program implementation. Many departments and agencies now specify appropriate channels of recourse—including the Québec Ombudsman—in their leaflets and decisions. Several organizations have consulted me prior to introducing automatic answering services. Even better, the administrative branch of the Treasury Board, which is responsible for all government telecommunications, recently decided to adopt the ten guidelines for automatic answering systems and asked my staff to act as consultants to the departments and agencies planning to introduce such systems. A number of departments and agencies have also adopted and published "client service charters" that incorporate aspects of the Social Contract. Some have gone beyond principle to set quantitative targets for improving services; they are developing the performance indicators so essential to monitoring real progress. In certain cases, I have been consulted about these charters before they have been made public.

Impact on Key Legislation Governing Administrative Justice

The government recently initiated a vast reform of administrative tribunals. Once again, the goals and standards set seek to meet public expectations by incorporating many Social Contract guidelines. Indeed, I submitted my observations to the parliamentary committee studying the issue. I believe that it is useful to quote the key sections of the new *Act respecting administrative justice*, which came into effect on April 1, 1988.

1. The purpose of this Act is to affirm the specific character of administrative justice, to ensure its quality, promptness and accessibility and to safeguard the fundamental rights of citizens...

2. The procedures leading to an individual decision to be made by the Administration, pursuant to norms or standards prescribed by law, in respect of a citizen shall be conducted in keeping with the duty to act fairly...

4. The Administration shall take appropriate measures to ensure :

(1) that procedures are conducted in accordance with legislative and administrative norms or standards and with other applicable rules of law, according to simple and flexible rules devoid of formalism, with respect, prudence and promptness, in accordance with the norms and standards of ethics and discipline governing its agents and with the requirements of good faith;

(2) that the citizen is given the opportunity to provide any information useful for the making of the decision and, where necessary, to complete his file;

(3) that decisions are made with diligence, are communicated to the person concerned in clear and concise terms and contain the information required to enable the person to communicate with the Administration;

(4) that the directives governing agents charged with making a decision are in keeping with the principles and obligations under this chapter and are available for consultation by the citizen.

5. An administrative authority may not issue an order to do or not to do something or make an unfavourable decision concerning a permit or licence or other authorization of like nature without first having:

(1) informed the citizen of its intention and the reasons therefor;

(2) informed the citizen of the substance of any complaints or objections that concern him;

(3) given the citizen the opportunity to present observations and, where necessary, to produce documents to complete his file...

6. An administrative authority that is about to make a decision in relation to an indemnity or a benefit which is unfavourable to a citizen must ensure that the citizen has received the information enabling him to communicate with the authority and that the citizen's file contains all information useful for the making of the decision. If the authority ascertains that such is not the case or that the file is incomplete, it shall postpone its decision for as long as is

required to communicate with the citizen and to give the citizen the opportunity to provide the pertinent information or documents to complete his file.

In communicating the decision, the administrative authority must inform the citizen that he has the right to apply, within the time indicated, to have the decision reviewed by the administrative authority.

7. Where, upon the request of a citizen, a situation is reexamined or a decision is reviewed, the administrative authority shall give the citizen the opportunity to present observations and, where necessary, to produce documents to complete his file.

8. An administrative authority shall give reasons for all unfavourable decisions it makes, and shall indicate any non-judicial proceeding available under the law and the time limits applicable.

This act will become a standard of reference for government decision-making authorities. The provisions I have just quoted set out many of the principles found in the corresponding sections of the *Social Contract*. The act is a big step forward, but I have noted that many of those called upon to render administrative decisions are unaware of it. The government should inform its personnel better, and make efforts to inform the general public.

THE MINISTÈRE DE L'ENVIRONNEMENT ET DE LA FAUNE VIOLATES THE *PUBLIC PROTECTOR ACT*

In the April 10, 1998 edition of the *Journal de Montréal*, Maude Goyer reported that, according to information obtained by the paper, officials at the Ministère de l'Environnement et de la Faune had deliberately kept information from the Québec Ombudsman that he needed in an investigation into the registration of big game. In particular, the coordinator of the Regional Affairs Branch was alleged to have requested in an memo dated last December 12 that an internal document dated October 22, 1997, not be handed over or mentioned to the investigator.

These allegations are extremely serious. At first glance, they suggest that an employee of the Department took the initiative of asking other staff members to interfere with the work of the Québec Ombudsman, who is mandated by the National Assembly to conduct investigations, notably into illegalities and foul-ups in the public service. The Ombudsman's job is to provide citizens with a democratic, affordable and readily available means of examining and correcting abuses they may suffer at the hands of the public service. In the short term, the initiative therefore effectively prevented him from holding the public service accountable.

Given the gravity of the allegations, I could not stand by, especially since the October 22 document that had been hidden contained important information on the issue under investigation.

The Québec Ombudsman's legal jurisdiction to seek out the causes of mismanagement, abuse and illegal action must be fully reaffirmed in keeping with the mission he has been given in his founding law.

I therefore mandated former Québec Court justice Guy Dorion to investigate the circumstances that led the Department to act as it did. At the time of writing, the chairman of the inquiry committee was about to submit his report so that appropriate action could be taken.

THE FINANCIAL SITUATION SEVERELY COMPROMISES THE QUÉBEC OMBUDSMAN'S EFFECTIVENESS

The Québec Ombudsman currently faces serious difficulties in maintaining service of "acceptable" quality for citizens seeking his assistance. To date, he has relied on the redoubled efforts of his staff to successfully provide adequate information, conduct investigations in a timely manner and uphold access to services without adding restrictive requirements such as the obligation to put complaints in writing. However, demands on employees are taking their toll, along with problems linked to outdated means of action and communication and the impossibility of training staff adequately to keep up with constantly changing laws and policies. At the same time, the small size of the Ombudsman's office means that the prolonged absence of any staff members has a negative effect on operations.

The Québec Ombudsman can no longer legitimately continue his work and uphold his mission unless he obtains additional resources, nor can he accept to provide a level of service inferior to that which he criticizes in government departments and agencies.

NOTES ON THE PRESENTATION OF THE ANNUAL REPORT

This year, the annual report has a different look.

Part 1 Government Bills And Reforms

This section focuses on some of the Québec Ombudsman's broader-reaching efforts to ensure that citizens' rights get the attention they deserve, including:

The way the Public Curator's office treats society's most vulnerable members, people who can no longer manage on their own and who are often without family or sometimes abandoned by what family they do have (Public Curator and Ministère des Relations avec les citoyens et de l'Immigration).

Foul-ups in the new support payment collection scheme, which was intended to improve the financial situation of single-parent families (Ministère du Revenu).

Immigrant sponsorships where sponsor commitments sometimes have devastating effects on families (Ministère de l'Emploi et de la Solidarité and Ministère des Relations avec les citoyens et de l'Immigration).

Problems with the prescription drug insurance plan (Régie de l'assurance-maladie and Ministère de la Santé et des services sociaux).

Medical research on individuals incapable of giving informed consent (Ministère de la Justice and Ministère de la Santé et des services sociaux).

The student financial assistance program (Ministère de l'Éducation).

Health problems in correctional services (Ministère de la Sécurité publique).

The hasty closing of Hôpital Saint-Julien (Ministère de la Santé et des services sociaux and the Regional Health Board).

Part 2 The Cases

This section illustrates cases of administrative foul-ups and the nonrespect of rights in particular cases submitted by private citizens. These cases are grouped by department and by type: abuse of power, illegal decisions, unreasonable and inequitable decisions, problems with access to government services, inadequate information, and administrative incoherence and disparities. They highlight the need to provide civil servants with the right tools to better respect rights and make fair and reasonable decisions.

Part 3 The Québec Ombudsmans Reports to the people

This section is an accounting of the Ombudsman's media interventions, speeches and role on the international scene.

Part 4 A few figures

This section provides the main administrative figures for the office as well as a statistical summary of the Québec Ombudsman's interventions.

In conclusion, I am pleased that the Québec Ombudsman's office, thanks to strong support from its staff, has achieved such credibility that the University of Sherbrooke awarded me an honorary law degree last June underscoring, as the letter from the Rector on behalf of the University Council stated, "the already widely recognized quality of your professional career and the eminent nature of your achievements in your field of activity".

1. Government Bills And Reforms

The Québec Ombudsman regularly intervenes with respect to government bills and reforms, employing a comprehensive approach increasingly aimed at preventing problems at their source.

Since his position was created, the Québec Ombudsman has primarily become known through his interventions on behalf of citizens who have suffered prejudice caused by government decisions or actions affecting them. Indeed, this role is clearly defined in the Public Protector Act. But the Québec Ombudsman also has a preventive role, a role he has come to play more and more frequently through his efforts to correct at the source—and sometimes even at the design stage—problems arising from the implementation of laws, regulations, programs and systems.

LIST OF BILLS AND REGULATIONS COMMENTED ON BY THE QUÉBEC OMBUDSMAN

During the 1997–98 Fiscal Year:

➤ Four draft regulations were analyzed.

The Québec Ombudsman made comments on two of the draft proposals to the ministers in charge:

- ✦ *Regulation amending the Rules of procedure of the Régie du logement*
- ✦ *Regulation to amend the Regulation respecting financial assistance for students*

➤ Forty bills and one draft bill were analyzed.

Five briefs were presented in Parliamentary Committee on these bills:

- ✦ *An Act to amend the Civil Code as regards medical research*;
- ✦ An *Act to amend the Act respecting police organization and the Police Act as regards police ethics* ;
- ✦ *An Act respecting income support, employment assistance and social solidarity*;
- ✦ *An Act respecting the distribution of financial products and services*; and
- ✦ *An Act to amend the Act respecting health services and social services and amending various legislative provisions.*

➤ The Québec Ombudsman made comments to the ministers in charge regarding the following bills:

- ✦ *An Act to reform the Québec Pension Plan and to amend various legislative provisions*
- ✦ *An Act to amend the Act respecting financial assistance for students*
- ✦ *An Act to amend the Civil Code and other legislative provisions as regards the publication of personal and movable real rights and the constitution of movable hypothecs without delivery*

Since the beginning of the 1998–99 Fiscal Year:

➤ Seven draft regulations; comments to the ministers in charge were made on two of the sets:

- ✦ *Regulation respecting the definition of resident in Québec*
- ✦ *Regulation to amend the Regulation respecting the tuition fees and special fees which a general and vocational college must charge*

➤ Twelve bills

Two of the bills were the subject of a brief:

- ✦ *An Act to amend the Code of Civil Procedure and other legislative provisions in relation to notarial matters*
- ✦ *An Act to amend the Act respecting Access to documents held by public bodies and the Protection of personal information, the Act respecting the protection of personal information in the private sector and other legislative provisions*

Comments on two other bills were made to the ministers in charge

- ✦ *An Act to amend the Act respecting the conservation and development of wildlife and the Act respecting commercial fisheries and aquaculture*
- ✦ *An Act to amend the Automobile Insurance Act*

OTHER SPECIFIC INTERVENTIONS BY THE QUÉBEC OMBUDSMAN

In the area of health care

The Public Curator and the incapacitated: a brief by the Québec Ombudsman

The *Public Curator Act* and the *Civil Code of Lower Canada* both underwent major reforms in the early 1990s. Laws on the protection of the "unfit" had not been overhauled for many years and were marked by outdated attitudes regarding mental illness and personal incapacitation.

✦ The Public Curator has to change with the times

Recognizing and seeking to ensure both the primacy of the individual and the priority accorded families and close relatives, the government redefined the duty of legal representatives. To do so, it increased their powers with regard to the protection of incapacitated adults, both when a family member or relative is designated curator or guardian—definitely the legislators' preferred option—and when the courts, in the incapacitated person's interest, confer this responsibility on the Public Curator. To clearly show its intentions, the government also gave the Public Curator a greater role in the implementation and monitoring of the various forms of private protective supervision. In addition, it accorded the Public Curator the power to investigate the administration of designated mandataries under a mandate accorded on account of incapacitation. Furthermore, the Public Curator must actively ensure that private guardians and curators have access to all the information they require to carry out their mandates.

Although the Public Curator was given greater responsibilities for protecting the rights of the incapacitated, it has maintained the same funding system based on levies from the assets of those it represents as well as from the vacant successions and abandoned assets under its management. The Québec Ombudsman believes that all Public Curator funding should be thoroughly overhauled.

✦ Representing the incapacitated: a colossal task

The Public Curator plays an extremely important social role for some of society's most vulnerable members. They are vulnerable because they have lost control over their destiny to varying degrees and because others must make decisions in their stead. Many are housed in public or private institutions, some of which operate without permits from the Ministère de la Santé et des Services sociaux, or live alone in apartments and rooming houses where they are often left to fend for themselves. In 1996, 24,138 people were under protective supervision, of which 12,482 were under the direct responsibility of the Public Curator. Has their situation really improved since the 1990 reform?

Given the increase in the number and seriousness of complaints the Québec Ombudsman has received, he has no choice but to respond in the negative. Between 1992 and 1997, the number of annual complaints concerning the Public Curator more than doubled, from 84 to over 200. As for the proportion of substantiated complaints[4], it has risen from 11.9% in 1992 to 50%, or one of two, today. In light of this worrisome increase and the importance of the Public Curator's role for the people it represents, the Ombudsman conducted an overall analysis focusing first and foremost on the Public Curator's fulfillment of its responsibility to protect rights.

✦ A brief to shed light on the plight of the voiceless

In November 1997, the Québec Ombudsman tabled a special report in the National Assembly entitled *The Public Curator and the Rights of the Incapacitated* (available in summary form in English). It identified numerous shortcomings in the protection of the rights of the incapacitated and included 43 recommendations to the Public Curator and the responsible authorities, including the Minister of Health and Social Services.

✦ The Public Curator must understand its mission

The Québec Ombudsman found that the Public Curator had not really understood the new mission conferred upon it by the government. Instead, it has tended to continue on as before, focusing its attention on asset management.

✦ Knowledge of the clientele: a clear shortcoming

The sitting Public Curator admitted that she knew little of the profile and needs of many of the people she represented. She was able to measure the extent of her ignorance in a number of regional tours in spring 1997 when she learned that many of those in her charge were living in unsanitary housing or almost total isolation without any intervention on the part of her employees or health and social service workers. Some of them were not even known to her office, even though the courts had placed them in her charge. Yet knowledge of the clientele and its needs is essential to the fulfillment of the Public Curator's protective role.

✦ The Public Curator: cooperation or partnership?

The Québec Ombudsman has also denounced the "partnership" approach long practiced by the Public Curator in its dealings with the health and social services network establishments where most of the people it represents live. Partnership must not be confused with cooperation. The Public Curator cannot ensure that service providers are offering quality care and respecting the

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4 Relationship between the number of complaints investigated and the number of substantiated complaints.

rights of those it represents while at the same time working in partnership with them. The risk of confusing roles is too great.

Indeed, the Québec Ombudsman found that the Public Curator relies too often on the sole advice of health care establishments in reaching decisions as important as placing someone under protective supervision, consenting to treatment, approving the participation of an incapacitated person in clinical research[5] and allowing the use of aversive behavior modification techniques or measures of isolation or restraint. In such situations, the Public Curator too often neglects seeking advance consent from the person in question or his or her close relatives. The Curator's office must cooperate with health care establishments without blindly following their recommendations.

The Québec Ombudsmen believes that use of aversive behavior modification techniques or isolation and restraint measures calls for strict legal guidelines. The Minister of Health and Social Services did amend provisions on restraint in the *Act respecting health services and social services* effective June 1, 1998[6].

> "118.1 Force, isolation, mechanical means or chemicals may not be used to place a person under control in an installation maintained by an institution except to prevent the person from inflicting harm upon himself or others. The use of such means must be minimal and resorted to only exceptionally, and must be appropriate having regard to the person's physical and mental state.
>
> Any measure referred to in the first paragraph applied in respect of a person must be noted in detail in the person's record. In particular, a description of the means used, the time during which they were used and a description of the behaviour which gave rise to the application or continued application of the measure must be recorded.
>
> Every institution must adopt a procedure for the application of such measures that is consistent with ministerial orientations, make the procedure known to the users of the institution and evaluate the application of such measures annually".

The Public Curator must also establish effective means of intervention that allow it to provide enlightened consent when such methods are required, as well as to monitor their use.

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[5] See page 45.

[6] 1997, c. 75, art. 49. The minister also requested an opinion on the use of electroshock therapy from the Council on Health Technology Assessment.

When health care facilities inform the Public Curator of possible non-resuscitation in the event of cardiopulmonary arrest, it does not systematically and thoroughly verify whether they have obtained prior consent from the person represented, or, if necessary, from his or her family or close relatives. In addition, the Québec Ombudsman found that the Public Curator does absolutely no follow-up on such "do not revive" orders. This has to change.

✦ Delays that can put lives at risk

The Québec Ombudsman found that it takes far to long for the Public Curator to take charge of persons in distress reported by establishments like CLSCs. These delays may endanger the health, safety or even the lives of isolated individuals in urgent need of protection. The Ombudsman has recommended that current rules be reviewed to speed up the intervention process while also ensuring continuity of services.

✦ The Public Curator's office is understaffed

Understaffing at the Public Curator's office explains some of the problems identified by the Québec Ombudsman, who has pointed out that the employee work load is excessively heavy and complex. It is not uncommon for case workers to have caseloads of 350 people or more, which means maintaining direct contact with each of them as well as making important decisions on their behalf. As for case workers responsible for monitoring those in the care of private curators or guardians, they have caseloads in excess of 800.

Although increasing staff won't solve all the problems, it is key to properly monitoring the some 24,000 individuals represented by the Public Curator. The Québec Ombudsman recommended to the National Assembly that the Minister of Relations with the Citizens and Immigration hire additional specialized personnel trained to fulfill the Public Curator's mandate. Since then, staff numbers have increased.

✦ Deinstitutionalization: Not so fast[7]

The current move to deinstitutionalize patients living in psychiatric institutions, some of them longtime residents, risks increasing their isolation and distress. The Québec Ombudsman considers that prior to their release, the Minister of Health and Social Services must take necessary measures to ensure that they are welcomed in their communities and enjoy the continuity of services to which they are entitled. To avoid the kind of marginalization they experienced while institutionalized, their integration into society must not be rushed, but planned in a way that respects the pace of all those involved.

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[7] See also page 43 for comments on the possible closing of Hôpital Saint-Julien.

The Québec Ombudsman recommended that the Minister of Health and Social Services suspend deinstitutionalization until all necessary resources were in place at the community level. He also urged the Public Curator to see that all residents released from institutions continued to receive the services to which they were entitled.

✦ Major corrections urgently required

Since the Québec Ombudsman submitted his report, *The Public Curator and the Rights of the Incapacitated*, the Auditor General of Québec has also released a special report (May 1998) focusing on the Public Curator's management practices. The government responded by asking the Committee on Administration to hear the Public Curator and to have a closer look at the two reports.

On May 14, 1998, the Minister of Relations with the Citizens and Immigration made a commitment before the National Assembly to take energetic measures to correct the situation and ensure the safety and well-being of the incapacitated. Various resource persons have been named to assist with the reforms undertaken by the Public Curator: Thomas J. Boudreau is acting as special adviser to the Public Curator on strategies and corrective measures; Jean-Claude Deschênes, the former deputy minister of Social Affairs, is reviewing the organization's mission; consulting firm Mallette Maheu is in charge of implementing part of the corrective operation; lawyer François Aquin is analyzing systemic problems in the organization of the Public Curator's office that may have resulted in financial losses to persons represented; and Monique Daigle is working directly with the Public Curator to assist in implementing corrective measures.

On August 17, 1998, the Public Curator presented an action plan to the Committee on Administration of the National Assembly setting out corrective measures to be taken.

The Québec Ombudsman plans to closely monitor the reform. He has already met with the Public Curator in company of the above-mentioned government appointees to explain his position, notably on the Public Curator's mission and funding. Other meetings are planned. The Ombudsman will also submit another special report on problems with how the Public Curator manages the assets of those it represents.

The deinstitutionalization of residents at Hôpital Saint-Julien. A joint effort by the Québec Ombudsman and the Public Curator (Ministère de la Santé et des Services sociaux)

Institutionalized individuals with mental health problems or mental handicaps grow dependent on their entourage for meeting their needs. Any change in their environment upsets them, especially if they are obliged to move from a facility that has not only served as their home, but also provided them with care and specialized services over the years.

Closing a care center or hospital like Saint-Julien requires careful planning to ensure that the rights and needs of those affected are respected. Yet shortcomings have been observed, both in terms of ends pursued and means employed, since the movement toward deinstitutionalization began in the 1960s. The Québec Ombudsman set out to ensure that those responsible for deinstitutionalization at Hôpital Saint-Julien would avoid the mistakes of the past.

Ever since the Mauricie–Bois-Francs Regional Health Board called on Hôpital Saint-Julien to produce a deinstitutionalization plan under the regional health and social services transformation plan adopted in May 1996, the concerns of those who would be affected by the closure of the hospital have become increasingly palpable. The Québec Ombudsman felt obliged to intervene in the interest of hospital users given the haste with which authorities seemed intent on proceeding, the worrisome silence of the Public Curator and the differences of opinion between hospital officials, regional health board representatives, staff at the Ministère de la Santé et des Services sociaux and various experts consulted on the matter. Furthermore, individual service plans (I.S.P.) for users had not yet been completed.

The Québec Ombudsman visited the hospital on February 26, 1998. He spoke with the Hôpital Saint-Julien support committee and hospital administrators, and also met personally with as many users as possible, as well as the Users Committee. The Ombudsman sought answers to several questions: What will happen to the hospital's 550 residents, a number of whom are severely incapacitated? Where will they go? What kind of care, services and resources will be available to them during the transition period and beyond? What will the Public Curator do to protect the persons it represents?

✦ Hôpital Saint-Julien and the Public Curator

The Public Curator was not notified in advance of plans to transfer hospital users despite the fact that it represents 479 of the hospital's 552 residents. The Québec Ombudsman thus deemed it essential for the Public Curator to intervene to ensure the respect of rights recognized notably in the *Charter of Human Rights and Freedoms*, the *Quebec Civil Code*, the *Act respecting health services and social services* and the *Public Curator Act*. The Public Curator's involvement could also benefit other hospital residents who have no legal counsel.

✦ The Québec Ombudsman's Position

The Québec Ombudsman is not opposed to deinstitutionalization or social reintegration measures aimed at individuals for whom institutionalization was once considered the only option. However, he does set certain conditions. In the past, the government supported and promoted the establishment of institutions for people with functional disabilities. Today, within a relatively short time, it seems to want these same individuals to become autonomous enough to make their own way in society. But what happens if, for any number of reasons, the deinstitutionalized experience difficulties in adapting or readapting to life outside the care facilities that have organized their lives from A to Z? Families, relatives, community organizations and volunteers cannot be expected to shoulder responsibilities dumped on them by health, social service and rehabilitation professionals unless there is also a transfer of resources.

The Québec Ombudsman believes that the Minister of Health and Social Services, who is responsible for applying the *Act respecting health services and social services*, must ensure that the integration of Hôpital Saint-Julien users into the community or other establishments respects the law and their rights. This includes the right to receive suitable health care and services as well as full residential services when necessary—either at a care facility or elsewhere—to ensure their health and safety.

✦ Social integration, but not at any price

Deinstitutionalization cannot be treated as dogma or based primarily on economic imperatives. If it is, serious problems can result. The challenge is to find the right balance between the role the government must play and the responsibilities of the community.

It is thus very important that the government not send citizens under its care back onto the street without appropriate resources. The negative effects of deinstitutionalization have been widely demonstrated in a report by the Comité de santé mentale du Québec.[8] According to the Committee, the deinstitutionalization of psychiatric patients begun in the 1960s had a number of negative impacts including a rise in homelessness, increased burdens for families, run-ins with the law and "revolving door syndrome," a term now widely used to describe repeat patient admissions to care facilities.

Large urban centers, especially Québec City and Montréal, face a growing problem with residents of no fixed address, who often have difficulty gaining access to health and social services. Poverty is not the only explanation for this phenomenon: deinstitutionalization also plays a major

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[8] Government of Québec, Ministère de la Santé et des services sociaux, Comité de la santé mentale du Québec, *Défis de la reconfiguration des services de santé mentale*, 1997, p. 18.

role. Street workers and front-line community organizations lack the necessary resources and are too few in number to meet even the most serious needs of this clientele.

The announcement of a new wave of deinstitutionalization measures, including those scheduled at Hôpital Saint-Julien, provides an opportunity to pause and take a critical look at the entire deinstitutionalization process still to come while also keeping in mind the commitments the government made in its policy on mental health.[9]

✦ **The Québec Ombudsman has therefore recommended that—**

➤ the Ministère de la Santé et des Services sociaux and the Mauricie–Bois-Francs Regional Health Board only deinstitutionalize users after evaluating their needs and ensuring the availability of suitable community resources;

➤ users continue to receive the appropriate services to which they are entitled (The Québec Ombudsman found that Hôpital Saint-Julien patients have multiple handicaps. If they require care and services available only at specialized institutions, the hospital cannot be closed unless another establishment is able to fill the gap.);

➤ the Public Curator authorize the transfer of Hôpital Saint-Julien users only after reaching agreement with the Minister of Health and Social Services on a protocol on respect for the rights of all users and provision for adequate follow-up; and

➤ mental health stakeholders reexamine the rules for new phases in deinstitutionalization in keeping with the commitments the government has made in its policy on mental health.

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The Citizen as the Subject of Medical Research: A New Law

In February 1998, the Committee on Institutions asked the Québec Ombudsman to submit his comments and proposals[10] on the *Draft Bill to amend the Civil Code as regards medical research*. The draft bill reflected the government's intentions to amend the rules governing medical

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[9] Government of Québec, Ministère de la Santé et des Services sociaux, 1989 - Politique de santé mentale.

[10] See the "Brief presented by the Québec Ombudsman to the Committee on Institutions concerning the *Draft Bill to amend the Civil Code as regards medical research*," February 1998, available from the Québec Ombudsman's office.

experimentation on persons unable to provide informed consent. At the heart of the debate was the issue of the protection of their fundamental rights to inviolability and personal integrity.

The Québec Ombudsman began by recalling that these are fundamental rights recognized to all by the *Charter of Human Rights and Freedoms*, and that the *Civil Code* must be applied in harmony with the Charter. Even when the goal is to facilitate the pursuit of important research likely to contribute to human well-being, it is essential that the commitment to protecting the rights of the most vulnerable, whether they are considered unfit because they are minors or for other reasons, remain firm. It was with this in mind that the Ombudsman analyzed the draft bill.

The government wished to give ethics committees designated or formed by the Minister of Health and Social Services the responsibility for approving research projects involving experiments on people incapable of giving consent. The Québec Ombudsman endorsed this approach based on the expertise and sense of responsibility of the ethics committees responsible for monitoring from the outset the nature, quality and scope of research involving those unfit to give consent. However, the draft bill was silent on committee makeup and operations. It also made no mention of how they would be monitored, who would be responsible for their actions, and whether citizens would be able to challenge their decisions.

In addition, the draft bill gives the minister the power to determine the conditions of an experiment on an incapacitated person without specifying whether this meant how the experiment would be conducted or how it would be approved by the ethics committees.

Moreover, under the draft bill, only an incapacitated person able to understand the nature and consequences of the experiment could refuse to take part. The Québec Ombudsman felt this approach restricted the right of refusal unduly. Unlike treatment, experiments are never required by a person's state of health and constitute an infringement of the fundamental right to personal integrity. The Ombudsman therefore recommended that any person, whether able or not to understand the nature and consequences of an experiment, be able to refuse at any time to take part.

Lastly, those called upon to give consent on behalf of an incapacitated person should be obliged to make the decision solely in that person's interests, and only if a real benefit to his or her health can be expected.

The Québec Ombudsman felt it was vital to eliminate any ambiguities and therefore recommended that clarification be made on each of these aspects and the information be released—particularly the details regarding ethics committee makeup and operations—before the bill was submitted to the National Assembly.

A bill was subsequently submitted to the National Assembly on May 13, 1998, (Bill No. 432) and assented to on June 17, 1998 (1998, S.Q., ch. 32). However, the regulations governing ethics committees have yet to be made public.

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The incarcerated have the same right as anyone to receive suitable, personalized medical services on an ongoing basis (Ministère de la Sécurité publique, Services correctionnels)

In light of the significant increase in the number of complaints from the prison population over the past several years,[11] the Québec Ombudsman decided to conduct a comprehensive analysis to pinpoint fundamental rights violations, their causes, and ways to prevent them.

Without waiting for the study's scheduled completion in fall 1998, the Québec Ombudsman notified the Department as early as March 1997 of several persistent problems, including certain health-related issues. Three major health-related problems stand out: the abnormally high suicide rate in Québec prisons,[12] the extent of mental health problems among inmates[13] and the failure of efforts to fight drug addiction.

Moreover, the Québec Ombudsman continues to receive regular complaints that show the extent to which rights as basic as the right to integrity and the right to dignity in a prison setting are overlooked. These include complaints about failure to provide prescribed medication as well as delays and negligence in providing treatment to inmates who are ill or injured.

In certain detention centers or prison wings, inmates still lack in-cell toilets and have to make do with a bucket at night. In others, overcrowding means that three people may have to sleep in the same cell, sometimes on a mattress on the floor, or in beds set up in the admissions area, which is very noisy, even at night.

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[11] The number of complaints from within the entire prison system increased by 93% between 1994 and 1998, and by 156.7% for large prisons.

[12] The suicide rate for male inmates aged 20 to 40 is 7.7 times higher than for males this age in the general population. In the other provinces, prison suicide rates are no more than twice the general rate. *Rapport d'enquête du Coroner*, September 14, 1997.

[13] *Le profil de la clientèle correctionnelle du Québec en matière de santé mentale*. Ministère de la Sécurité publique, October 1995. According to this study, approximately 30% of the prison population is affected to varying degrees by social or mental problems, a situation closely linked to the phenomenon of deinstitutionalization in the health and social services system.

Transfers due to overpopulation also have a negative impact on prison and rehabilitation conditions, and ultimately on inmates' physical and mental health.

Detention center staff, particularly correctional services officers, are also quite often called upon to intervene with inmates who have behavioral or mental health problems. Use of some degree of force is sometimes necessary if, for example, an individual refuses to obey an order (leave his cell, submit to a search, etc.) and must be subdued before being transferred to a higher security sector, or when intoxicated or in a state of crisis.

In such situations, both inmates and prison staff run the risk of being injured or suffering traumatisms of some type. Generally speaking, as soon control is reestablished, those involved are examined by a member of the detention center's medical team to ensure they receive the required care and to verify whether there was excessive use of force. However, various complaints have revealed that this examination is not always conducted.

The Québec Ombudsman's efforts led to the drafting of a procedure clearly stating that "in any situation where force, however minimal, is used, the inmate must be examined by the duty nurse as soon as possible."

The problems described above, along with others that will be brought to light when the special report is tabled, are currently being discussed with Correctional Services authorities. Running penal institutions is clearly a difficult and challenging responsibility. The tensions and deep changes affecting society as a whole are inevitably echoed and even amplified in the prison setting. Given this, off-the-shelf solutions are rarely applicable; seeking reasonable accommodation is more appropriate.

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Prescription Drug Insurance (Régie de l'assurance maladie)

✦ Major inequities persist

The *Act respecting prescription drug insurance* has been the subject of numerous complaints from citizens since it was passed in June 1996. Despite a significant drop in complaints more recently, there is still considerable dissatisfaction with the way the insurance plan has been implemented.

In 1997–1998, the Québec Ombudsman received 284 complaints compared to 716 the previous year. These complaints mainly concerned—

➤ the excessive cost of coinsurance and deductibles under that part of the plan administered by the Régie de l'assurance-maladie du Québec; and

➤ the excessive cost of premiums in cases where group insurance plan subscribers must take out multiple protection for their families to ensure they are covered by prescription drug insurance, as required by law.

✦ Excessive deductible and coinsurance costs

The 1996–1997 Annual Report pointed out that under the plan administered by the Régie, maximums for deductibles and coinsurance had been set for each quarter. Yet this policy placed certain individuals, particularly income security recipients, in a precarious position, notably if they were obliged to pay their quarterly contribution all at once because of the high cost of their medication. The Québec Ombudsman found that individuals taking large quantities of medication had no choice but to cut or put off essential spending, or put their health further at risk if they were forced to deprive themselves of medication due to lack of money.

To resolve this problem, the Québec Ombudsman proposed a monthly rather than quarterly ceiling. The government accepted the suggestion, which was implemented in July 1997. Since then, the number of complaints has significantly decreased.

The Québec Ombudsman has also been informed that community organizations, user committees and health and social service establishments are still being asked for assistance from people incapable of paying their deductibles and coinsurance costs. Other criticisms are that people with little or no income cut down on the quantities of medication they take, leading to expensive and avoidable hospital stays. The Ministère de la Santé et des Services sociaux is aware of this problem and has requested an in-depth study of it from McGill University. The Québec Ombudsman is convinced that the establishment of a monthly, rather than quarterly ceiling was beneficial, but problems remain. He plans to take a close look at the study results before issuing an opinion on the merits of restoring a no-pay system for some of society's most disadvantaged groups.

✦ Excessive Group Insurance Costs

Anyone with access to a group insurance plan must take out coverage and extend it to his or her spouse and dependents. However, group insurance plans do not only include drug insurance, but also other forms of protection like reimbursement for medical services received outside Québec, chiropractor's care and dental treatment made available as part of package.

Although many people are willing to pay additional premiums in order to comply with the law and obtain prescription drug insurance for their families, they want freedom of choice when it comes to additional coverage that can considerably increase premiums.

The Québec Ombudsman denounced this unintended effect of the legislation last year. Since then, adjustments were to have kicked in as private insurance plans expired and came up for

renegotiation. However, judging by the number of complaints on the issue received this year, changes have been slow to come if they've come at all. For the second time, the Ombudsman denounces this unacceptable and unfair situation created by the law itself, and which forces people to take out more coverage than what is required to meet objectives.

✦ Premiums paid but no service rendered—or a hidden penalty

With regard to the preceding section, it should be noted that for certain group insurance holders, the additional premiums required by insurers represent a burden so disproportionate to their incomes that they have been unable to take out coverage for their families. Yet the law requires them to do so and is drafted in such a manner that the Régie de l'assurance-maladie is not allowed to provide them with coverage under the public plan. At the same time, tax provisions in the law assign the Ministère du Revenu the task of collecting premiums for those not covered by private insurance, even if they are ineligible for public plan coverage. Although the law includes no criminal penalty, this punitive approach seems clearly unacceptable.

✦ Ceilings on deductibles and coinsurance, confidentiality: nothing has been done

Once again, the Québec Ombudsman also deplores that no action was taken on his recommendation that ceilings on deductibles be the same for everyone at the same level of income, no matter what the source. Private pensioners, part-time workers and the unemployed should enjoy the same benefits as income security or federal old age security recipients if their incomes are the same.

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The complaints management system in health and social services (Ministère de la santé et des services sociaux)

Although health care and social services are still largely funded by the public purse, users still do not have access to any truly independent form of third-party recourse. For more than 10 years now, numerous proposals have been made to extend the Québec Ombudsman's jurisdiction over decisions by departments and their senior officials and staff to also cover acts and omissions by health and social service establishments.

When the government undertook a major reform of the health and social services system in 1991, it chose instead to set up a three-level in-house complaint processing mechanism inspired by existing management structures: the establishment in question, the regional health board and, as a last resort, a complaints commissioner reporting back to the minister in charge.

The commissioner has received 500 complaints since this system was put in place in 1993. This has not, however, prevented a growing number of users from turning to the Québec Ombudsman. In 1997–98 alone, over 900 complaints were received, a 60% increase over three

years. The Ombudsman is therefore quite familiar with the problems that arise, even though he is obliged to redirect the complainants elsewhere. However, he has noted that seeking recourse through the system is difficult, especially for society's most vulnerable citizens.

This is the reason he requested to appear before the Committee on Social Affairs during the study of Bill 404 aimed at amending the *Act respecting health services and social services* once again. He felt it even more important to take part in the debate given that regionalization, the key feature of the reform, had to be viewed in a health care context already significantly transformed by the move to community-based care, deinstitutionalization and the privatization of certain system operations. The situation is no longer the same as the one that prevailed in the early 1990s.

The goal of bringing people closer to the decision making process is certainly a laudable one, but there are also risks to decentralization: a further reduction in government responsibility for health and social services and the emergence of new regional disparities, both in terms of the range of services available and respect for user rights.

Among other things, the Québec Ombudsman drafted 19 recommendations concerning the complaints processing system, notably that—

➤ at all levels of the review process, users no longer be required to file their complaints in writing;

➤ those responsible for examining complaints in health care establishments report to the board of directors and have the power to intervene on their own initiative in prejudicial situations, including to protect users from reprisals;

➤ the complaints review stage at the regional health board level be abolished;

➤ changes also be made to allow the complaints commissioner to act on his or her own initiative and, if required, at a systemic level, as well as to allow users who have received services in more than one establishment or been discharged to contact him or her directly;

➤ establishments file annual reports with the complaints commissioner and the Québec Ombudsman on how complaints have been dealt with; and

➤ health and social services users have a last resort right to appeal to the Ombudsman.

Despite this, the government has not made any significant improvements to the way complaints are handled.

In the area of family and children's policies

The reorganization of family and children's services (Ministère de la famille et de l'enfance)

The area of family and children's services has undergone a major transformation with the introduction of the new family policy and the subsequent integration of family financial assistance measures. The government began by moving away from the universality principle in the area of family allowances when it introduced a unified child allowance on August 15, 1997, available only to certain parents.

However, all parents now have access to the new low-cost, $5-a-day childcare program for children aged 4. The program, which was introduced for 1997–98, will gradually be extended to cover younger children as well.

Moreover, starting in September 1997, daycare centers and family daycare agencies have five years to convert themselves into early childhood centers and must offer both types of daycare service. At the same time, a moratorium was placed on the development of spaces in private daycare facilities, leading to negotiations about the possibility of providing them with public funding.

Also in fall 1997, the Ministère de l'Éducation assumed full responsibility for five-year-olds when it introduced full-day kindergarten and took charge of ensuring the provision of childcare services in schools.

The introduction of so many major changes over such a short period caused considerable concern and dissatisfaction. Notable among the problems brought to the Québec Ombudsman's attention were difficulties experienced in reaching the Department's information service and complaints about insufficient information concerning the various reforms. The centralization of departmental services in Montréal failed to resolve these problems, which peaked during the ice storm of January 1998.

But the most frequently raised issues were the lack of low-cost spaces for 4-year-olds or delays in providing them. Starting in late June 1997, most parents tried to reserve places for their children at the daycare centers of their choice the following fall. However, many of them were turned down. A number of daycare centers were already full, and the policy at many centers was to give priority to the parents of children already registered. The parents affected felt the policy was unfair and inequitable and claimed that it favored higher income earners.

The Québec Ombudsman immediately approached the Department to point out these problems, clarify certain aspects of departmental policy and obtain explanations on how low-cost spaces are attributed and on delays in the planning and funding of additional spaces.

The Department refused to accept any responsibility for how spaces were attributed. Most unexpectedly, it also refused to recognize that demand had considerably outstripped its projections and that it would have to free up additional money in order to meet its commitments.

In July 1997, the Québec Ombudsman suggested that the Department either find additional resources or clarify the accessibility situation by issuing a press release explaining that it did not have sufficient funds to meet the needs of all parents. The Ombudsman also asked the Department to take measures to ensure that available spaces were attributed in an equitable and efficient manner rather than hide behind the daycare centers, which lacked the resources to correct the Department's administrative mismanagement and delays.

The Department continued to deny any responsibility for assigning spaces, but decided to seek additional funding so that it could increase the number of spaces available. At the beginning of the school year, demand rose, increasing pressure on the system. Once again, the Québec Ombudsman was obliged to remind the Department of its commitments and its responsibility for dealing with complaints from citizens and organizations affected by the reform.

Finally, in October 1997, the Québec Ombudsman was informed that the Department had obtained the necessary funding and would add new spaces as soon as possible. Some 5,000 extra spaces were created on top of the 33,000 originally planned, mainly by integrating private daycare facilities into the public network. It had taken nearly six months for the Department to respond adequately to the demands of parents and daycare operators.

Most of the parents who complained to the Québec Ombudsman were thus able to obtain low-cost spaces. However, some of them had to fall back on other solutions because daycare facilities in their areas were full to capacity. They were therefore denied access to a service they had been entitled to expect on the basis of the Department's commitments. Without the tolerance of parents and the support of the daycare network, the introduction of the new program could have taken a much more dramatic turn. Let us hope that the Department has learned its lesson for subsequent phases of the program, and that it will provide suitable and timely information as well as proper management and funding.

The new integrated child allowance (Régie des rentes du Québec)

Once plans for a new integrated child allowance were in place in winter 1997, the Régie des rentes, the main agency responsible for implementation, intended to proceed very rapidly. Looking ahead, the Québec Ombudsman contacted Régie officials to warn of the impact the change would have on income security benefits, student loans and the obligation to produce a tax return. The Régie proved sensitive to his remarks and immediately suggested setting up an advisory committee. It invited the Ombudsman to sit as a member so as to benefit from his knowledge of citizens' needs and his special expertise in correcting the kind of linkage problems that could be expected between the departments and organizations involved.

The committee set right to work by focusing on three main issues: informing the public, harmonizing the allowance with other government programs and developing solutions for various special cases.

Given that all parents had to file tax returns to qualify immediately for the allowance, the committee recommended a much more explicit approach to providing information and more direct targeting of very low income parents, many of whom could face serious short-term difficulties were they not to file a return. In situations where immediate filing was impossible—because of a dispute with the Ministère du Revenu for example, or because a person with mental health problems refused to file—the committee suggested the Régie use its discretionary power to set the allowance based on a presumed income level until tax returns could be filed.

It was also necessary to ensure that the Ministère du Revenu give these tax returns priority treatment, make provisions enabling the Régie des rentes to retroactively adjust payments over a twelve-month period, and revise the contents of leaflets and notices, paying special attention to those intended for income security recipients.

As for harmonization between the various organizations and departments directly involved (Régie des rentes, Ministère du Revenu, Ministère de l'Emploi et de la Solidarité and Ministère de l'Enfance et de la Famille), the committee had two key priorities: to ensure that each was well informed about the terms of the program and to see that all had thoroughly understood the changes that needed to be made to their own systems so that complete information would be ready for the public, and cheques diligently issued on time. The committee therefore focused on employee training, access to information services, and service delivery.

In the particular case of the Régie des rentes and the Ministère de l'Emploi et de la Solidarité (formerly the Ministère de la Sécurité du revenu), all employees assigned to the new program received at least two days of training. At the Régie des rentes, the training sessions, which were adapted to employees' levels of responsibility, were augmented by a guide largely based on questions raised by the Québec Ombudsman's representatives. In addition, business hours at both organizations were extended and the number of client service representatives increased.

The computer system at the Régie des rentes has been updated, but will continue to depend on the federal family allowance system for a two-year period. In the meantime, the Régie will work to facilitate procedures for the public and seek a way to register families directly, perhaps through the Vital Statistics Registry.

The committee also followed up on the Québec Ombudsman's concerns with respect to the program's impact on people enrolled in the student financial aid program. The committee's work with the Ministère de l'Éducation made it possible to anticipate and prevent numerous problems that would have occurred had no measures been taken.

In the area of income security

Social assistance reform completed (Ministère de l'Emploi et de la Solidarité)

In December 1997, the Ministère de l'Emploi et de la Solidarité presented Bill 186, which sought the adoption of the Act respecting income support, employment assistance and social solidarity[14]. The act, the last stage of an income security reform begun over two years earlier, followed on the heels of a discussion paper tabled in December 1996 entitled "The Road to Labour Market Entry, Training and Employment"[15].

It should be noted that the income security program had undergone several changes prior to the bill's introduction. The changes, which were intended to correct certain situations previously denounced by the Québec Ombudsman, were as follows:

- Abolish the reduction in benefits for shared housing for single parent families receiving income security;
- Establish a special $500 return-to-work supplement;
- Exclude up to a maximum of $100 in income from support payments when calculating benefits for families with dependent children under five.

The new act pursues the reform by attempting—as its name indicates—to reconcile two objectives: fostering individual financial autonomy by helping people enter or reenter the work force on one hand, and ensuring that those unable to work to meet their basic needs enjoy a decent standard of living on the other.

The act contains a number of positive measures regarding citizens' rights: the civil servant's duty to inform and assist anyone requiring guidance so as to facilitate his or her access to various employment assistance measures, programs and services; the creation of a complaints department; and, lastly, improvements to the procedure for reviewing decisions by Department officers. In this way, the act responds to proposals made by the Québec Ombudsman in the Social Contract he released in 1994,[16] and which stress that the government must commit to providing citizens with all

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14 The act was assented to on June 20, 1998.

15 Québec government discussion paper, Ministère de la Sécurité du revenu, 1996.

16 See *24th Annual Report 1993–94*, Québec Ombudsman.

the information they need in a timely fashion, ensuring that citizens thoroughly understand the information conveyed to them, setting up complaint review offices, and creating user advisory committees.

The Department followed other recommendations from the Québec Ombudsman as well. Original plans to decrease benefits to income security recipients between 55 and 60 on the grounds that they were fit to work were dropped. Instead, the new act maintains more generous benefits for citizens in this age group in recognition of the additional difficulties they face in their attempts to reenter the job market. The new act also deals with the issue of family violence. Drawing on new law, Section 110 deals with repayment of joint debts and provides that "a spouse is not liable for the repayment if the spouse proves that the spouse's real circumstances could not be declared by reason of the violent behaviour of the other spouse toward the spouse or the spouse's dependent child."

This new provision allows victims of domestic violence who received income security benefits for which they were not eligible to have their debts forgiven.

This said, the Québec Ombudsman regretfully notes that the new act maintains a number of measures from the current *Act respecting income security* that have placed a number of citizens in situations of increased poverty by reducing their benefits or excluding them from assistance altogether. Measures to encourage citizens to return to school or help them find a job are well and good. It is another story when the law authorizes Department officers to reduce benefits by penalizing citizens who refuse to participate, but does not clearly define the limits on such reductions. Moreover, efforts to promote autonomy and social solidarity aren't helped by maintaining penalties for income security recipients who share housing but who are not single parents, denying assistance to individuals or families who have some savings at the time of their applications, and seizing benefits for nonpayment of rent without first ensuring that the portion of benefits allocated for housing is adequate.

A last point that the Québec Ombudsman would like to stress is that making people look for jobs and forcing young people to follow personalized job action plans only make sense if enough jobs are created. Individual action alone is not enough to reduce poverty.

In the area of support payments

Support Payment Collection Division (Ministère du revenu)

More than two years after the *Act facilitating the payment of support* came into effect on December 1, 1995, the objectives of the new automatic collection system have not all been met. Although certain problems were resolved over the course of the year, complaints to the Québec Ombudsman increased by 172%, rising from 332 in 1996–97 to 905 in 1997–98. The main issues were as follows:

Compulsory compliance for all

All maintenance orders delivered since December 1, 1995, are subject to the law. The universality of the scheme, which covers all support payments—even if there has been no default in payment—has drawn criticism. Some people have denounced this state interference in their private affairs.

It is possible, however, to obtain an exemption. For this, three conditions must be met: agreement by both parties, court approval, and provision of a security deposit to the Ministère du Revenu equal to three months' support payments. This last condition has generated a number of complaints because it often prevents low income earners from qualifying for the exemption.

A legislative change was therefore introduced on the recommendation of the Québec Ombudsman and came into effect on December 18, 1997. It reduced the security requirement to one month of support payments and extended the deadline for deposit from 10 days to one month.

The obligation to go through the courts

Only a court order can set the collection procedure in motion. Even agreements between parties must be approved by the courts to be recognized under the system. Recent amendments to the *Code of Civil Procedure*[17] have made it easier for parties who, by mutual agreement, wish to make their agreement binding or alter an earlier order. Applications are now heard by the special clerk, significantly reducing costs and waiting periods.

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17 See Bill 65, which was passed on June 13, 1997, and came into effect on September 1, 1997.

Ongoing problems

Delays are still the main source of dissatisfaction with the collection scheme.

In September 1997, delays represented 52% of all complaints and occurred at all stages of the file processing procedure: assignments, file opening, follow-up and transfer to the tax collection center for order enforcement measures. Most complaints concerned the Montréal collection office, which has experienced considerable staff turnover since it was opened in 1997. Lack of management continuity has fostered a form of work organization focused on short term results.

There is another factor behind the delays, common to both the Montréal and Québec City collection offices: the hastily programmed computer system set up following the hurried introduction of the *Act facilitating the payment of support*. The Department is currently overhauling the system in light of the experience gained over the past two years.

Insufficient information from the Department is another ongoing problem. In March 1998, 32% of the complaints dealt with this issue. Despite the Québec Ombudsman's recommendations, the Department continued to keep secret information of direct concern to the parties involved. It has finally decided to change its policy to better inform creditors of efforts to collect support payments on their behalf.

Lastly, although harmonization with the Ministère de l'Emploi et de la Solidarité is theoretically complete, problems persist. After learning—often from their children or the debtors themselves—that support payments have been collected, a number of creditors on income security have been left wondering why they haven't seen a penny themselves. When the Ministère de l'Emploi et de la Solidarité subrogates to the rights of a creditor, it is the one that receives the money from the Ministère du Revenu. However, such files are processed differently depending on whether support payments are higher or lower than creditors' income security benefits. If payments are higher, they no longer qualify for social assistance because their incomes exceed their benefits. In such cases, the Ministère du Revenu must remit support payments directly to the creditors. As for amounts collected to cover arrears, they are divided in proportion to the amounts owing each party (Ministère de l'Emploi et de la Solidarité and the creditor).

In May 1997, the Québec Ombudsman intervened to have the Ministère de l'Emploi et de la Solidarité stop putting all money received from the Ministère du Revenu toward repayment of outstanding debts. The Ombudsman's recommendation was accepted and it was decided that in future, *Civil Code* rules regarding prorata distribution would be followed.

However the increase in the number of complaints on this matter has made it clear that the management of subrogated files remains inconsistent, and that a number of creditors who should normally have had access to support payments remained on social assistance, with last resort assistance as their only income. The investigation revealed that the problem lied in the lack of coordination between the two departments regarding the exchange of information. In order to begin

remitting support payments to a creditor, the Ministère du Revenu must first obtain authorization from the Ministère de l'Emploi et de la Solidarité in a document that indicates both the date at which assistance comes to an end and the arrears owed the Department and the creditor on that date. As for the Ministère de l'Emploi et de la Solidarité, it must check with the Ministère du Revenu to ensure that support payments are regular and stable before stopping benefits.

To end hardships to creditors on income security, the Québec Ombudsman recommended that the Department speed up the implementation of electronic information exchange with the Ministère de l'Emploi et de la Solidarité.

It goes without saying that problems in administering the plan—and especially the delays that result—have an unacceptable impact on mothers and their children and lead to increased poverty for many of them. Inadequate exchange of information prevents single mothers from becoming financially independent; as a result, they rely on last resort assistance for too long and with no valid reason.

In the area of immigration

Sponsorship agreement (Ministère des Relations avec les citoyens et de l'Immigration)

Having received several hundred complaints about immigration sponsorship rules and practices, the Québec Ombudsman reviewed the situation and suggested a number of measures to put an end to frequent injustices. The Québec Auditor General also found that for years, the government had done little or nothing to follow up on sponsorship agreements, and had recovered virtually none of the social assistance benefits paid to sponsored immigrants.

In Québec, as at the federal level, one of the objectives of the law is to reunite Canadian citizens and permanent residents with their close relatives abroad. Québec selects immigrants who wish to settle in the province by virtue of several federal-provincial agreements.

A foreign national may apply for permanent residency in Québec as a family member. In such cases, the applicant's family ties with a citizen residing in Québec are checked, and the latter must agree to provide for, as required, the basic needs of the person applying for residency. This is called sponsorship. The sponsor also agrees to repay the government for any social assistance benefits provided to the sponsored immigrant. The duration of the agreement is three years for a spouse or fiancé, and ten years for a dependent child, father, mother, etc.

In 1990, the Ministère des Communautés culturelles et de l'Immigration (MCCI) conducted a study to find out why certain sponsors failed to respect their agreements fully and to reassess sponsorship regulations. In 1995, the Department—which had since become the Ministère des Affaires internationales, de l'Immigration et des Communautés culturelles (MAIICC)—and the

Ministère de la Sécurité du revenu (MSR) set up a joint pilot project to get sponsors to assume their responsibilities and to recover money owed.

The pilot project targeted sponsors of immigrants who had recently become income security recipients, but excluded sponsors who were income security recipients themselves, as well as those who had been victims of family violence or owed less than $4,000. The pilot project became a permanent program in December 1995.

The *Act respecting income security* was amended to facilitate debt collection. The prescribed period for debt collection was increased from 3 to 5 years and the Department was authorized to claim back the income security benefits paid to sponsored immigrants and dependents directly from sponsors.

After complaints to the Québec Ombudsman highlighted a number of program foul-ups, 23 recommendations were made. At the time of writing, these recommendations were the subject of agreements between the Ombudsman and the authorities in question. To be continued...

In the area of education

Financial aid to students (Ministère de l'Éducation)

The Québec Ombudsman has the right to review services provided directly by the Ministère de l'Éducation. In 1997–98, the number of complaints to the Ombudsman remained stable, but the number of substantiated complaints[18] rose 6% to reach 35%. This increase was essentially attributable to complaints regarding student aid.

For a number of years now, the Québec Ombudsman has denounced problems related to management and the quality of service and recourse available in matters of student aid. His comments and the recommendations made by the Groupe de travail sur l'aide financière led to legislative and administrative changes that raised hopes of significant improvements. Most notable among these were the prepublication requirement for new regulations, the granting of a right to appeal decisions, the abolition of user fees for the computerized phone system and the delegation to school student aid offices of certain responsibilities for processing students' requests for corrections.

Although certain problems were largely ironed out, others persisted while new ones appeared as soon as the effects of the changes were felt. Moreover, legalistic interpretations of the law and regulations have often prevented solutions from being found and stood in the way of meeting program

[18] Relationship between the number of complaints investigated and the number of substantiated complaints.

objectives, i.e., facilitating access to vocational training and higher education for students unable to continue their education without financial assistance.

Quality of management and services therefore remains an issue of great concern. In fact, the Québec Ombudsman plans to draft a special report for Department officials in the near future.

Changes to student aid and their impact on students and access to education

Regulations governing the attribution of student aid were tightened up again, seriously compromising access to vocational training and higher education for many people. The Ministère de l'Éducation had already placed limits on the number of semesters for which aid was available. In 1997–98, it also imposed a ceiling on the amount students could borrow for each level of studies as well as for the total duration of their studies.

However, this limit, which was designed to stem student indebtedness and encourage academic success, often had the opposite effect. The students most affected were inevitably those experiencing difficulties at school, those obliged to return to school in order to enter or reenter the job market and, even more, students with families to care for.

The Québec Ombudsman has pointed out before the inequitable nature of these measures, which cause exclusion in more ways than one[19]. He believes that responsibility for controlling the duration of studies lies more with teaching establishments whereas the role of the aid program is to encourage and not to limit access to higher education and vocational training. Teaching establishments are also better positioned to assess individual circumstances that may slow student progress, something nobody else can do by applying an administrative standard, no matter how clear.

The Québec Ombudsman also stressed that such measures should not be retroactive. Several hundred students who had undertaken a program of studies on the basis of the old rules were forced to withdraw because the Department failed to provide for fair transition measures. The situation for those remaining is hardly more acceptable. They must apply for departmental approval through the Comité des demandes dérogatoires in order to have the rules applying to them maintained, which makes them even more vulnerable.

The fact that the Committee received nearly 800 applications for exemption over a very short period raises serious questions as to the utility of this "failure tax." How can these students be expected to manage financially while awaiting a decision and at the same time remain confident enough to focus on their studies?

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19 QUÉBEC OMBUDSMAN. *27th Annual Report 1996–97*, Québec City, September 1997, p. 67.

Repayment of defaulted loans

Section 43 of the *Act respecting financial assistance for students* provides that anyone who has not repaid his or her student debts or reached a repayment agreement with the Department is ineligible for student aid. Since the 1997 summer semester, defaulting students must have also repaid 50% of their student debts before they requalify for financial assistance.

Measures to encourage repayment of student loans are certainly necessary, but there is also a need to take into account special situations. Otherwise, limits on access to education will reappear for those in financially difficult circumstances.

The family policy and financial aid for students

The new family policy that came into effect on January 1, 1998, had a significant impact on the running of the financial assistance program, so much so that corrective regulations had to be adopted during the school year to harmonize the program with the brand new integrated child allowance. This situation, which was largely attributable to a lack of coordination between the Ministère de l'Enfance et de la Famille and the Ministère de l'Éducation, led to an increase in applications for changes and to delays in paying financial aid. The Québec Ombudsman acknowledges that the Ministère de l'Éducation reacted positively to his interventions and followed through on its promise not to impose any financial penalties on students in the year following the implementation of the new policy.

Inmates also have the right to an education

International rules on the treatment of prisoners ratified by many countries, including Canada, include an obligation to encourage and develop access to education for the incarcerated. Moreover, the Canadian and Québec charters of rights place no limitations on inmates' rights in this regard and, aside from restrictions that may be imposed on any citizen by a law, inmates must have equal access to the benefits available to all.

Yet the draft regulation to amend the *Regulation respecting financial assistance for students* introduced by the Ministère de l'Éducation went in the opposite direction. In fact, it could be interpreted to mean that anyone being held pending trial or serving out a prison sentence, no matter how long, would not qualify for student financial assistance.

In the eyes of the Québec Ombudsman, access to knowledge or training is key to the process of social reintegration. He therefore intervened with the minister of education upon realizing that those who had drafted the bill were too unfamiliar with the rules of the prison system to accurately assess the impact of the proposed measures and make adjustments to ensure that inmates' rights were respected.

Although the regulation was adopted without amendment, the Ministère de l'Éducation agreed to suspend its application long enough to allow a thorough examination of the situation and draw up a directive of interpretation respectful of inmates' rights to acquire an education.

In the area of privacy

The five-year review of the *Act respecting Access to documents held by public bodies and the Protection of personal information* (R.S.Q., Ch. A–2.1) (Commission d'accès à l'information)

The report of the Commission d'accès à l'information on the implementation of the *Act respecting the protection of personal information in the private sector* led to an in-depth reflection on the future of the rights vested by these laws.

The recent past often holds clues to the future, which is why there is ample cause for concern about whether the goals of ensuring government openness and protection of privacy that guided the National Assembly in 1982 still prevail. Other goals appear to have taken their place. Whether for the purpose of controlling and tightening up government spending or promoting the use and development of information and communications technologies, there appears to be a growing trend toward cloaking government actions in secrecy while placing citizens under ever increasing scrutiny.

Legislative proposals—whether acted on or abandoned—for dealing with tax evasion and the underground economy, consolidating personal data, using information for multiple purposes, or introducing prescription drug insurance as well as a citizen's card and a health card are very revealing to close observers. Citizens are increasingly caught up in a bureaucratic web that is growing more and more difficult to untangle and control.

Projects like the ones mentioned above inevitably alter the relationship between government and the governed, a key concern of the Québec Ombudsman, as he revealed with the *Social Contract* he proposed to the public service in his *1993–94 Annual Report*.

This is why the Québec Ombudsman spoke out during debate on these projects to stress the need for establishing real communication between citizens and the state. True communication can only exist when citizens are well informed and have the means to voice their opinions, criticisms and suggestions—in short, to make their needs and expectations known to their elected representatives as well as those who implement policy. True communication also requires trust and mutual respect.

The review of the *Act respecting Access* should therefore have provided the opportunity to question its fundamental values and its implicit and explicit objectives as the 21st century draws nigh.

The *Act respecting Access*, like the *Charter of Human Rights and Freedoms*, has an overriding character and the values it reflects are viewed by the Québec Ombudsman as a key feature

of state-citizen relations. The review of the act was to give everyone a chance to think about the human need to protect privacy, but also an opportunity to redefine areas where the state may be authorized to obtain or release private information in the interest of the common good.

The Québec Ombudsman therefore insisted on the need to restrict the circulation of personal information of a public nature in order to avoid the proliferation of databanks on private individuals.

He also called for changes to section 168, which affirms the preponderance of the *Act respecting Access*, to make it impossible to ignore the rights recognized in the law unless the exemption is clearly defined and justifiable in a free and democratic society. For the Québec Ombudsman, all applications for exemption must be accompanied by the following information:

- a detailed description of the problem;
- a social and legal assessment of the issues;
- a cost analysis;
- alternatives measures for protecting the rights recognized under the law;
- a description of the technologies and structures that will be used, as the case may be.

Similarly, the Québec Ombudsman stressed that the law should also include a mechanism to assess the social impact of information technologies so that all legislative, regulatory and administrative measures employing information technology be evaluated prior to implementation.

Bill 451, which was drafted in response to the Commission d'accès d'information report to amend the *Act respecting Access*, was recently the subject of public consultations in which the Québec Ombudsman also took part. He pointed out that a number of the proposed amendments were significant improvements on the current law, notably measures aimed at facilitating access to information for the handicapped and tightening conditions for the exchange of personal information, as well as provisions on the use of information technologies.

He also declared that the responsibility for assessing the impact of information technologies newly conferred on the Commission d'accès à l'information marked an important step forward in law for the protection of personal information.

In contrast, the Québec Ombudsman had to reiterate that the preponderant nature of the *Act respecting Access* was not stated strongly enough in the current legislation and that the amendments proposed in Bill 451 failed to meet his expectations in this regard.

Identity Card Issues
(Human rights and freedoms)

In March 1997, the Parliamentary Committee on Culture took the initiative of holding public hearings on identity cards and privacy protection. The hearings came in response to concerns raised by the Auditor General, the Québec Ombudsman and the Commission d'accès à l'information regarding various government projects to develop cards for use as identification and in obtaining services. Among these were the Chief Electoral Officer's proposal for a voter's card, the smart card being developed by the Régie de l'assurance-maladie to replace existing health insurance cards, and the multiservice card, or so-called "citizen's card" that the Secrétariat de l'autoroute de l'information was talking about.

The Québec Ombudsman submitted two briefs on the issue, the first at the beginning of the hearings and the second at the request of the Committee on Culture, which wanted the Ombudsman, the Commission d'accès à l'information, the Auditor General and the Commission de protection des droits de la personne et des droits de la jeunesse to summarize the debate and make suggestions in light of the discussions.

The Ombudsman looked at the social implications of an identity card from the perspective of state-citizen relations, the confidentiality of personal information, control of information by the person concerned, and the development of the information highway.

In an era where communications and data processing systems can provide access to megafiles and highly sensitive information, he stressed the urgent need to develop ways of guaranteeing system security.

At the same time, he urged the government to ensure that all public servants received practical, hands-on training on the universal individual right to respect for privacy, and to continually raise awareness of the issue. Rights, ethics, even morality are at stake, not to mention that respecting privacy is an obligation inherent in the duties of the public servant. It must never be forgotten that behind each piece of personal data lies a person who trusted someone, and who must maintain that sense of trust.

With regard to the issue of an identity card, the Québec Ombudsman identified the following objectives:

➤ Respect Québec culture in the area of rights and liberties: identity cards should not be compulsory (a guarantee to this effect should be included in the *Charter*);

➤ Protect against the emergence of a society where Big Brother is always watching: the card should not be linked or provide access to a central database;

➤ Dissociate "identification" and "government services";

- Help individuals maintain control over information that concerns them;
- Identify the costs associated with the various formats and technologies available;

In his complementary brief, the Québec Ombudsman reached the following conclusion:

> "A simple means of identification requiring no superfluous personal information, free of such risks as fraudulent or undesirable use, should be available to all citizens. A simple and economic solution should be possible, provided it is not included in a sophisticated package (citizen identification card, private and public multiservice card, smart card) that responds to both the real needs of the citizen and the potential needs of government and private industry. Different needs, different solutions. The government could entrust one of its departments with the responsibility of issuing identification cards to interested citizens.
>
> Through the use of technology to minimize the risk of falsification or forgery, such a card could contain the holder's photo, birth date, address, signature and registration number identifying the card rather than the individual.
>
> The physical support of such a card should be developed so as to minimize costs, which, in fact, would be assumed by the citizen.
>
> The government department responsible for this card should not be permitted to generate a population file from the data collected or supplement any other file it may have as a result of this information. To ensure the government itself abides by this provision, legislation should be adopted to this effect".

Lastly, the Québec Ombudsman reiterated his initial proposal that citizens not be obligated to carry an identification card and, to show his concern, that such a provision be entrenched in the *Charter of Human Rights and Freedoms*.

In the area of the agriculture

Joint agricultural product marketing plans (Régie des marchés agricoles et alimentaires du Québec)

Public confidence in processes and procedures largely depends on the integrity of those who apply them. To ensure integrity as well as the appearance of integrity, decision makers—in this case, the managers of a "joint plan marketing board"—must avoid any situations of conflict of interest. Conflict of interest occurs when someone's personal interests come in conflict with the interests of the organization or people he or she represents and is charged with defending.

The *Act respecting the marketing of agricultural, food and fish products* authorizes farmers to join forces to more effectively market their products. Dairy, apple, potato and beef producers are among those who have pooled their resources in what are commonly called joint plans. Such plans are administered through marketing boards managed by those elected by the plan's members. It is important to note that when the Régie des marchés agricoles et alimentaires du Québec—a government agency responsible for monitoring marketing boards and approving their regulations—approves the establishment of a joint plan, all producers of the product in question (dairy products, apples, beef, etc.) are obliged to comply with plan regulations. For example, all potato farmers must pay annual dues to the Québec Federation of Potato Farmers, which acts as a marketing board. They must also comply with regulations governing how the product is to be sold. In return, the marketing board's mission is to represent the interests of all producers when negotiating business deals with buyers and processors, or in crop insurance negotiations with the government.

It goes without saying that plan managers responsible for promoting the interests of the producers of a given product cannot have business interests in a company or type of company with which negotiations are being held if those interests differ from or contrast with producer interests.

By way of example, a member of the blueberry marketing board with a major interest in a company that buys blueberries from farmers for processing and resale would have a conflict of interest; as a "buyer," his goal would be to buy at the lowest price possible whereas as a producer representative, he would be seeking the highest possible price.

The *Act respecting marketing* recognizes this need, declaring in Section 89 that:

> "No person whose commercial interests are incompatible with the mission of a marketing board may hold office as a director of that board".

The Québec Ombudsman intervened with the Régie des marchés agricoles et de l'alimentation du Québec after receiving complaints about a joint plan from farmers, to recommend a new conflict of interest evaluation criterion intended to improve the law's clarity and effectiveness.

The Québec Ombudsman proposed that all joint plan board members file a declaration listing any business interests they have other than as a farmer, much as elected municipal officials must declare all their financial interests prior to taking a seat on council.

The Régie des marchés agricoles et l'alimentation du Québec included the recommendation in the list of suggested amendments to the law it presented to the minister of agriculture.

In the area of the environment

Wastewater treatment: Follow-up on a case presented on page 92 of the 1996–97 Annual Report entitled "A hasty modification"

In his last annual report, the Québec Ombudsman commented on the attitude of the Department over changes made in July 1995 to a regulation defining wastewater standards for residences not served by a sewer network. At the time, provisions were added to authorize the use of peat-based biofiltration systems, opening the door to the marketing of a new technology. Moreover, a new concept was introduced into the regulation, one creating a performance obligation—residential wastewater treated with a biofiltration system had to meet special discharge standards. Moreover, the manufacturer had to certify that every biofilter it installed delivered a level of performance equal to or higher than the discharge standards set by regulation.

In December 1995, the Québec Ombudsman received a complaint containing allegations serious enough to justify an investigation. Although development of the system, which began back in 1988, had been closely followed by the Department from the outset, and despite the regulatory amendment passed a number of months earlier authorizing the system's use on residential properties, the Department maintained that it was unable to confirm whether the system worked as claimed. The Québec Ombudsman thus asked the Minister to assume his responsibilities as a conscientious public administrator and demonstrate the effectiveness of the system.

The investigation continued and it was only recently that the Québec Ombudsman learned of a serious study on this specific system, even though the Department had been in possession of it since early 1997. The study was performed by a group of independent experts further to an agreement between the Department and the manufacturer. It was a key piece of information that led the Ombudsman to reconsider his original conclusions. He thus decided to reexamine the entire issue and, more specifically, to measure the impact of this study on the Department's ability to pronounce on the system's effectiveness. Moreover, the Ombudsman has a duty to ensure that all parties to the affair were fairly treated.

If the Québec Ombudsman had received the study in a timely fashion, he would not have stated that no assessment was underway. The fact that the Department failed to inform him of the study invalidated certain of the Ombudsman's conclusions and may have misled many people into believing that he did not approve of the system, which is not the case. The case is moving forward.

2. The Cases

Every year, the Québec Ombudsman investigates thousands of government decisions. Complaints to the Ombudsman are substantiated 30% of the time. The cases presented in this section reflect the diversity of problems that citizens can experience in their dealings with government departments and organizations.

Public authorities must treat citizens with the respect they are owed. Civil servants must act in a professional and impartial manner—it says so right in the *Civil Service Act*. That means that civil servants must not abuse their powers, and their decisions must respect the law and be reasonable. They must also act reasonably and not misconstrue the purpose for their discretionary powers. They must avoid mistakes and, obviously enough, not be negligent in handling citizens' files for which they are responsible. They must also act in a timely fashion. Government organizations exist to serve the public, which means they must inform people of their rights, publicize the services they offer, and make sure everyone can benefit from their services.

Whenever these rules are broken, the Québec Ombudsman intervenes to ask officials to put the situation right.

The Québec Ombudsman's tools and reference points are many: court decisions; special statutes that impose duties on the civil service; the Act respecting administrative justice, which has been in force since April 1, 1993, and which sets higher standards for civil servants; and also since 1993, the Québec Ombudsman's *Social Contract*, a set of 56 rules compiled by the office of the Ombudsman over the years to guide the government in its dealings with the public (see appended *Social Contract*).

The cases on the next pages include references to the *Social Contract*. They have been grouped together according to how the harm or injustice was caused, and placed under the names of their respective departments and organizations in alphabetical order.

ABUSE OF POWER

What constitutes an abuse of power by government? Any illegal actions taken deliberately or in bad faith, or any unreasonable decisions made for an illegitimate goal.

The *Social Contract* contains guidelines for preventing the abuse of power, namely:

3.3 When the decision-making process is discretionary, establish a framework for decisions using criteria and measures that allow their objective application.

3.5 Employ a decision-making process that prevents arbitrary decisions or abuse of power.

4.4 Reject all forms of partiality in decisions that are made and any pursuit of illegitimate objectives. Avoid all conflicts of interest.

MINISTÈRE DE L'AGRICULTURE, DES PÊCHERIES ET DE L'ALIMENTATION AND MINISTÈRE DE LA JUSTICE

A Gale of Debatable Procedures and Decisions

In 1992, a company specialized in the import and export of marine products applied to the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation (MAPAQ) for a permit to use an abandoned plant for processing operations. The application was refused on the grounds that it did not meet the economic criteria set out in the law. According to the Department, the company's application failed to show that the project was realistic and profitable. Even more, it would have had a destabilizing effect on the economy in the region, where the processing industry was already in financial difficulty. The company challenged the decision in Québec Superior Court, which ruled in its favor and ordered the Department to issue the permit.

However, both MAPAQ and the Attorney General contested the judgment on two fronts. Worse, after failing to make any headway with one procedure, two appeals were launched challenging the plaintiff's claims. The latter then asked the Québec Ombudsman to look into the affair.

The investigation revealed that despite a legal commitment to grant no third party permits on the projected plant, MAPAQ had, during the course of legal proceedings, encouraged a third party to purchase the plant, which it did. With the sale, the government was able to plead that the plaintiff should have obtained access rights to the plant before applying for the permit and that in any case, the plant had been purchased by a third party, thereby justifying MAPAQ's refusal to grant the permit. Yet as early as 1989, MAPAQ had asked "all promoters to submit their permit applications to the Ministère de l'Agriculture before proceeding with any investments".

The investigation also revealed that during the legal proceedings launched by the plaintiff, MAPAQ had accorded two grants for a feasibility study of the third party's project for the plant in question.

Moreover, MAPAQ had also promised to issue a permit to the third party. Not only that, during legal proceedings initiated by the third party, the Attorney General found a way to achieve his ends since the Superior Court justice had no choice but to rule that the third party had a right to a processing permit, even though the government was under obligation to the Court of Appeal's decision with regard to the plaintiff.

In a preliminary report, the Québec Ombudsman concluded that MAPAQ and the Attorney General had apparently acted in bad faith, especially since the Court of Appeal had elsewhere ruled that MAPAQ could not refuse a permit on economic grounds, but only for noncompliance with standards of hygiene. More important still, during the proceedings, MAPAQ had had the law amended—retroactively to boot—to justify past permit rejections.

Department officials refused to answer the Québec Ombudsman's 28 questions, wrongly claiming that he had no jurisdiction over the matter. Rather than challenge their refusal, the Québec Ombudsman submitted a final report showing that the plaintiff had been the victim of injustice and abuse of power, and that the Attorney General and MAPAQ had acted in bad faith and against all ethical standards. He recommended that officials drop one of the proceedings and compensate the plaintiff for damages, including legal costs.

The government refused to act on the Québec Ombudsman's recommendations, preferring to continue with its proceedings before the Court of Appeal while at the same time beginning to negotiate a settlement with the plaintiff. However, the Québec Court of Appeal recently ruled that the government had no right to refuse the permit. Negotiations continue.

The Québec Ombudsman's report provided the impetus for action on the plaintiff's case and, in this sense, was akin to a form of "compulsory" mediation. Moreover, the Québec Ombudsman considers that the government exploited its position of authority to the fullest before the courts at the expense of a private citizen, abusively exercising its powers by perverting their true purpose. It disregarded fundamental rules of ethics and the principle of good faith.

MINISTÈRE DE L'ÉDUCATION

Information sharing between departments must also be in students' interest.

When granting a loan or bursary, the Ministère de l'Éducation takes into account student income. The higher the income, the less assistance is granted, which is normal. Since 1994, the Department has been cross-checking income figures declared by students against their Ministère du Revenu tax returns.

A student obtained a bursary from a federal government organization for the 1994–95 school year while also qualifying for a bursary from the Ministère de l'Éducation. The federal bursary, which the Department considered as income, was paid in two $1,250 installments. When the student filled out the Ministère de l'Éducation's income confirmation form in December 1994, he declared that he had received the entire amount of the bursary, convinced that he would soon receive the second installment. However, the Ministère de l'Éducation took into account income earned between January 1 and December 31, 1994, in calculating the amount of the student's financial assistance. Since he declared $2,500 rather than $1,250, the Department reduced his bursary and claimed back the overpayment.

The student delayed in asking the Department to change the amount of his bursary award even though he had not received the second federal bursary payment. In fact, the person responsible for student aid at his teaching establishment assured him, in good faith, that the Department would correct the error when it detected the difference between the amount he had declared to the Ministère de l'Éducation and the amount on his Ministère du Revenu tax return, where he had claimed to have received only $1,250.

However, not only did the Department fail to correct the error, but when the student applied for assistance the following year, it included the second federal bursary payment in his income, whereas the amount had already been mistakenly deducted the year before.

In February 1997, after several unsuccessful attempts to rectify the situation, the student turned to the Department's Review Office, which reexamined the file, but only canceled the repayment claim for 1994–95. The Department refused to pay the remainder of the bursary amount for 1994–95 even though the student met the criteria. He then took his case to the Québec Ombudsman.

The Québec Ombudsman intervened and asked Department officials to pay the remainder of the bursary. The Department upheld its decision, alleging that the delay between the filing of the income confirmation form and the review application was too long. It refused to take the circumstances into account.

The Québec Ombudsman considers that the Department had all the information required to correct the mistake and adjust the amount of financial assistance when it noticed the

difference in declared income. As a result, he believes the case must be reexamined given that both the student and student aid officer were acting in good faith. Databank cross referencing must benefit all parties.

To date, the Department still refuses to pay the student the balance of the bursary he was entitled to for 1994–95, a decision the Québec Ombudsman considers unreasonable.

MINISTÈRE DES RELATIONS AVEC LES CITOYENS ET DE L'IMMIGRATION

Too old to repay a debt within a reasonable time

A citizen sponsored a member of his family who wished to settle in Québec, but was unable to meet the man's basic needs. The sponsored immigrant then applied for social assistance to survive. Under the law, sponsors unable to respect their obligations may be asked to repay income security benefits paid to sponsored immigrants by the Ministère de l'Emploi et de la Solidarité. The Department therefore claimed back $100 a month from the sponsor, who offered to repay $56 per month instead. Because he was on old age security, the Department considered him too old to spread repayment over a long period. He was therefore penalized because of his age. Since such discrimination is unacceptable, the Québec Ombudsman advised the Department that the capacity to pay must be the only criteria for reaching a repayment agreement, and that age must not be considered. The reimbursement offer was eventually accepted.

The *Charter of Human Rights and Freedoms* forbids discrimination based on age, unless a law itself makes a distinction on age grounds. The *Canadian Charter of Rights and Freedoms* also forbids discrimination on the basis of age.

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

When prison authorities mistake their suspicions for convictions, solitary confinement and abusive searches may result.

Given the lucrative prison drug market, inmates sometimes swallow drugs or use their body cavities to smuggle in illicit substances, particularly upon returning from temporary leave. Authorities suspecting smuggling may conduct a search or isolate the inmates in question to check their bowel movements over a period of up to 72 hours, the maximum permitted under law.

However, simple security regulations can sometimes take a harassing turn. This was the case for an inmate who agreed to undergo a rectal and vaginal search upon her return from a temporary absence.

When the search failed to erase the suspicions of the official in charge, the inmate was placed in solitary confinement for 72 hours, left unclothed and forced to sleep on a mattress without sheets. Since she felt sick and was forbidden to wash herself, the cell became unsanitary. After 72 hours, the inmate hadn't evacuated any foreign substances, yet the official, against all biological logic, felt that there still might be drugs in her body. He therefore decided to isolate her for another 72 hour period in contravention of the law.

The Québec Ombudsman took emergency action to put a stop to the totally unacceptable situation. However, the official remained unconvinced, and threatened to punish the inmate again if anyone in her section of the prison was found taking drugs in the subsequent days. The Québec Ombudsman had to intervene a second time to prevent any reprisals of this kind.

The *Charter of Human Rights and Freedoms* states that all persons have a right to dignity and honor. The Charter also applies to inmates, something the official forgot to take into account.

Temporary leave for social reintegration unreasonably canceled

An inmate was granted a temporary absence to take part in an open custody program designed to foster social reintegration. However, the authorization was revoked by the administrator without the inmate's being notified of the reasons in writing, as required by law. The inmate therefore found himself unknowingly deprived of his right to appeal to the Commission québécoise des libérations conditionnelles, the appeal deadline having expired.

Following the Québec Ombudsman's intervention, the administrator informed the inmate in writing of the reasons for the revocation and the Commission agreed to examine the appeal despite the fact that the deadline had expired.

ILLEGAL DECISIONS

The Government is guilty of acting illegally when it contravenes one of its own standards or a standard imposed by law. The Government and its agents are subject to the same laws as the citizens they oversee. That's what we mean by rule of law.

Unlike abuse of power, illegal acts are often committed out of ignorance of the law.

The *Social Contract* lays down several rules to help avoid illegal decisions:

3.1 Abide by special statutes and regulations as well as regular legislation;

3.2 Promote respect for basic rights and freedoms in each action that is taken.;

3.3 When the decision-making process is discretionary, establish a framework for decisions using criteria and measures that allow their objective application.

COMMISSION DE LA SANTÉ ET DE LA SÉCURITÉ AU TRAVAIL

Only the law can say whether an occupational injury has occurred

In May 1997, a worker injured his spine. The Commission de la santé et de la sécurité au travail questioned the claim, noting that the lumbar sprain occurred on a Monday morning a little over 30 minutes after the start of the workday, and that the employer was a relative of the victim. What's more, the worker informed the Commission that his own business had been experiencing financial difficulties for the previous two years and that was why he had been forced to seek paid employment with his relative.

At the worker's request, the Québec Ombudsman approached the Commission. He pointed out that, under the law, the criteria for determining whether an occupational injury has occurred are clear: the worker must have suffered an injury at his place of work while performing his job, and the injury must be job related.

Since the worker had to lift panels weighing between 35 and 45 kilos, he was at risk of straining his back. In addition, a note in the file indicated that someone had witnessed the accident. Following the Québec Ombudsman's intervention, the Commission approved the claim and compensated the worker.

MINISTÈRE DE L'EMPLOI ET DE LA SOLIDARITÉ

Don't make distinctions the law doesn't make

A social aid recipient went back to school under a program of the Ministère de l'Emploi et de la Solidarité designed to help people re-enter the job market by following customized action plans. She enrolled in secondary school part-time to earn her diploma, and applied for financial assistance from the Department for tuition and books as provided for under the law. Her application was turned down because, to be entitled to assistance, students had to be enrolled full-time.

The Québec Ombudsman's investigation determined that not only did the law make no distinction between full-time and part-time students, but the complainant's action plan imposed no such limitation either. The Department accepted the Ombudsman's position and reversed its decision. It also clarified the policy with all supervisory staff.

You can't count income earned abroad when calculating how much a person who is not a Canadian citizen or landed immigrant is entitled to receive for a childcare subsidy.

In September 1996, a self-employed worker who had just moved to Canada applied to the Ministère de la Sécurité du revenu (now the Ministère de l'Emploi et de la Solidarité) for a childcare subsidy. He enclosed a work contract with his application showing income earned since his arrival in Québec. The Department granted the financial assistance, but at a lower rate than he had anticipated according to his income. The worker noted that to determine the amount of the subsidy, the Department had counted income earned in Europe in 1996. Since the worker had already paid income tax abroad, he asked for the decision to be reviewed. Nevertheless, it was upheld. In frustration, he complained to the Québec Ombudsman.

The investigation revealed that the Department had acted unduly since under the law, only income earned abroad by a Canadian citizen or landed immigrant can be counted; as it was, the worker fit into neither of these categories at the time he worked in Europe. The Department therefore overturned its decision and retroactively awarded him the sum of $1,650.

MINISTÈRE DU REVENU

The law states that information provided by taxpayers for taxation purposes must remain confidential. What's more, the *Act respecting access to information and the protection of personal information* as well as the *Charter of Human Rights and Freedoms* upholds the confidentiality of identifying information and the principle of the right to privacy.

A taxpayer's social insurance number is confidential, even for the Ministère du Revenu

When a taxpayer owes money to the Ministère du Revenu, the Department can seize amounts owed to the taxpayer by a third party. The Québec Ombudsman has noted that when the Ministère du Revenu does so, it indicates the debtor's social insurance number on the notice it sends out. Yet this information is confidential and not required for a claim involving a third party, and revealing it is a violation of the basic rules of tax law. The Department has agreed to change its guidelines to prevent the situation from reoccurring.

More about confidentiality

A tax collection officer at the Ministère du Revenu contacted a taxpayer to have her pay what she owed. However, she advised him that she was unable to pay off her debt at the time. The officer insisted and suggested that, seeing as her husband had recently received an income tax refund, she could ask him to pay the debt for her.

The taxpayer mentioned the conversation to her husband, who expressed his outrage to the officer for having revealed the contents of his tax file that way without authorization and thereby violated his right to privacy.

He contacted the Québec Ombudsman, who reminded the Department that civil servants do not have the right to provide confidential taxpayer information to third parties. The Department agreed to emphasize the confidentiality of tax information in its training programs.

Even more about confidentiality, with wrong information to boot

A taxpayer proposed a repayment agreement to the Ministère du Revenu, but was turned down. In the end, he agreed to make monthly payments of $240. However, his wife, who handled the family's finances, realized that it was impossible to make payments that big without jeopardizing the family's ability to make ends meet. She therefore sent the Department a series of postdated cheques for a lesser amount, explaining that that was the best she could do for the time being.

The person in charge of the file contacted her to suggest she pay the amount owing herself. He reminded her that she had RRSPs she could cash in without suffering any tax penalty.

The woman contacted the Québec Ombudsman. The investigation revealed that not only had the civil servant consulted her file without authorization, but also that the information he had supplied was incorrect. The Department apologized to the taxpayer for breaking the law and providing her with erroneous information.

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

Prisoners have a need to come clean

A directive from management at correctional services states that, for the first days after admission, incarcerated individuals are to receive personal grooming items such as a razor, shaving cream, a comb, shampoo, a toothbrush, toothpaste, soap and sanitary napkins. However, replacement items are at the prisoner's expense.

A number of prisoners at Rivière-des-Prairies received no toothbrush or toothpaste upon admission. They asked for these items as soon as they were transferred to the sector where they were to be held pending classification, but were told they would only get them once they were assigned to their respective sectors, i.e., in several days.

They complained to the Québec Ombudsman, who immediately intervened to have the toiletries distributed to them and the Department remind its personnel about the directive.

SOCIÉTÉ DE L'ASSURANCE AUTOMOBILE DU QUÉBEC (SAAQ)

The accident victim was entitled to a higher income replacement indemnity because he was offered a work contract after the accident.

A man had been teaching part-time for two years at the time he suffered a motor vehicle accident. However, a few weeks later, he was offered a full-time teaching contract for the new year at an annual salary of $33,000.

When an accident victim is between work contracts at the time of an accident, the Société de l'assurance automobile may, under certain conditions, hold that the victim occupied a part-time or temporary position. This was what it decided in this case. It concluded that the accident victim was entitled to an income replacement indemnity of $290 every two weeks. The claimant was unhappy and complained to the Québec Ombudsman.

After analyzing the case, the Québec Ombudsman concluded that allowance should be made for the claimant's actual circumstances at the time of the accident. Had he not been considered unemployed, and had his new employment contract been taken into consideration, the claimant would have been entitled to $775 every two weeks starting on the first day of his contract. SAAQ followed the Ombudsman's recommendation in this regard.

In its role as the representative of the Régie de l'assurance maladie du Québec for health insurance card renewals, SAAQ illegally refused to take a taxpayer's picture on the grounds that he owed it money.

Since May 1, 1995, health insurance cards and driver's licenses require photo I.D. When people are notified to renew their health insurance cards, they can go to any SAAQ service outlet to be photographed. SAAQ then transmits their photos and signatures to the Régie de l'assurance-maladie, which issues their cards. This procedure was set up after the Québec Ombudsman asked that the same picture be used for both cards so that people did not have to incur unnecessary expenses.

A man had to renew his health insurance card, and so he went to a SAAQ office to have his picture taken. The employee there refused to process his application because he had an overdue account with SAAQ.

In fact, he was just one of a number of people this happened to, and who asked the Québec Ombudsman to intervene. After the Ombudsman took action, SAAQ promised that a reminder would be issued to all employees and representatives to ensure that such situations would not occur again, particularly since the practice was forbidden by SAAQ. As a representative of the Régie, SAAQ cannot take advantage of its position to force people to settle their outstanding SAAQ debts.

SAAQ illegally refused to reimburse cab fare to a victim who had no access to public transit.

A traffic accident victim was prescribed physiotherapy treatments and had to travel to the closest city about a dozen kilometers away to receive them.

Since no public transit was available between the two localities, the victim often traveled with friends, but did not present a claim for travel expenses. However, on occasion, these good Samaritans were not available and the victim had to take a cab and submit a claim. SAAQ refused to reimburse the cost of the fare because the medical report did not specify the patient was to take a taxi. The victim complained to the Québec Ombudsman.

After investigating the case, the Québec Ombudsman reminded SAAQ that the *Regulation on the reimbursement of certain expenses* clearly stated that cab fares were reimbursable, particularly when no public transit was available. SAAQ did not have the power to impose its own conditions. It thus reimbursed the victim's expenses.

The law says what the law says!

Between April 1984 and June 1989, the Société de l'assurance automobile du Québec agreed to capitalize residual annuities at the request of certain traffic accident victims. However, when they suffered relapses, SAAQ refused to pay income replacement indemnities on the grounds that their annuities were capitalized.

An accident victim appealed to the Commission des affaires sociales, which upheld SAAQ's decision. The case was then referred to the Superior Court, which ruled on September 6, 1994, that the capitalized annuity was an indemnity owing to the victim, but that it did not include any indemnity owing as a result of a further prejudice.

When SAAQ took its time acting on the ruling, the Québec Ombudsman intervened and asked it to identify all cases where it had turned down an income replacement indemnity for a relapse on the grounds that the annuity had been capitalized. He also suggested it follow through on the Superior Court's ruling and award the indemnity.

SAAQ agreed to review its files and assess the claims, but only in those files where the medical reports were sufficient to render a decision on the relapse. As it turned out, paperwork was incomplete or nonexistent in a number of cases for the simple reason that SAAQ had informed the victims that it would not pay an indemnity because their annuities were capitalized. The victims could hardly have been expected to forward medical proof.

The Québec Ombudsman recommended that SAAQ take whatever action was necessary to obtain the information it needed to reach a decision on all cases. In November 1997, SAAQ

advised the Québec Ombudsman that it would contact the 15 victims who had declared relapses and claimed such indemnities between 1984 and 1989. To be continued...

An income replacement indemnity for a student is better than no indemnity at all.

Underage traffic accident victims are entitled to a lump sum indemnity per school year lost when they are unable to begin or continue their studies and suffer a delay in their education. The indemnity ceases at the end of the school year during which the victim turns 16. However, when victims are still incapable of beginning or continuing their studies or holding down a job, they qualify for an income replacement indemnity based on an average worker's income.

A 15-year-old Secondary IV student suffered serious injuries in an accident in April 1990. In spring '91, the victim turned 16, but was still incapable of continuing his studies or holding down a job. That meant that he was entitled to an income replacement indemnity, but he was paid nothing by SAAQ.

A complaint was filed with the Québec Ombudsman. The investigation revealed that he was entitled to an income replacement indemnity retroactive to July 1, 1991. At the Ombudsman's request, SAAQ reviewed its file and paid the victim a retroactive indemnity of $73,000.

UNREASONABLE AND UNFAIR DECISIONS

Decisions made by the public service are considered unreasonable if, although legal, they cause injustice. Examples include applying administrative policy or regulations in a way that adversely affects individuals, or giving an overly narrow interpretation to a law, regulation or administrative policy.

The *Social Contract* states that the following procedures should be followed to ensure reasonable decisions are made:

3.3 When the decision-making process is discretionary, establish a framework for decisions using criteria and measures that allow their objective application.

3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.

3.5 Employ a decision-making process that prevents arbitrary decisions or abuse of power.

3.6 Have the means to act, where applicable, on a purely equitable basis, when exceptional circumstances so require.

3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, and emphasize rather an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.

4.1 Avoid making decisions without giving citizens the chance to express their point of view or the opportunity to provide all relevant information.

4.2 Take the initiative to ask citizens for the paperwork missing from the applications or claims they make, rather than turning down or holding up their applications without further explanation.

4.4 Reject all forms of partiality in decisions that are made and any pursuit of illegitimate objectives. Avoid all conflicts of interest.

5.1 Always respect the spirit of the law when designing, implementing, or updating a government program. According to the *Interpretation Act*, a law is presumed to eliminate prejudice.

7.3 Avoid treating citizens who claim a service or a benefit as if they were seeking privileges and not rights.

7.4 Do unto others as you would have them do unto you.

7.7 Avoid excessive administrative rigidity in all dealings with citizens, while remaining thorough.

7.8 Take into consideration the aspirations, characteristics and conditions of native peoples and cultural communities.

MINISTÈRE DE L'AGRICULTURE, DES PÊCHERIES ET DE L'ALIMENTATION DU QUÉBEC

A farmer was misled about specifications, then penalized because of it. After denying responsibility, the Department finally agreed to pay compensation.

In 1990, a farmer applied to the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation for a grant under the *Programme d'aide à l'amélioration et la gestion des fumiers* to build a manure storage structure. The Department prepared the agronomic and technical specifications indicating the factors to be taken into account during building, notably precipitation, the quantity of manure to be stored and the required storage period. With this information in hand, and as required under the program, the farmer had an engineering firm prepare plans and drawings based on the specifications for the structure. However, the following spring, the structure overflowed after only 180 days of use, whereas it had been designed for 250 days and the herd had not even attained its planned size.

The farmer was convinced that the Department's standards and specifications were inadequate, and asked it to assume the cost of corrective work on the structure. When he got nowhere, he asked the Québec Ombudsman to intervene.

The Ombudsman examined all documents related to the *Programme d'aide à l'amélioration de la gestion des fumiers* and, more specifically, the guidelines and standards for the construction of manure storage facilities.

The Department claimed that the engineer should have checked rain and snowfall levels to determine the dimensions required for a 250 day storage period. It said it was not responsible for errors that may have been made by the firm. The Québec Ombudsman could not accept this point of view. Although the *Guide de bonnes pratiques pour l'aménagement des structures d'entreposage des fumiers* did in fact say the engineer was responsible, the Ombudsman noted that the only guidelines on the subject available at the time were those contained in the guide.

The Québec Ombudsman discovered that the Department had altered its standards for storage structure design in 1991 to account for higher precipitation levels. He therefore concluded that the Department could not require a private engineer to have more knowledge than its own specialists or criticize the engineer for working on the basis of the Department's own specifications. Officials assured the Ombudsman that they would rectify the situation as soon as regulations for the new financial assistance program were known, and the Department compensated the farmer for the cost of correcting the structure.

MINISTÈRE DE L'ÉDUCATION

FCAR Fund: rigid and incoherent administrative policies at a number of levels unnecessarily penalize funding recipients.

To support scientific and technical research, the Fonds pour la Formation de Chercheurs et l'Aide à la Recherche (FCAR) under the jurisdiction of the Ministère de l'Éducation administers various bursary programs designed for graduate students and postgraduate researchers. FCAR awards a limited number of bursaries every year to candidates who rank at the top of the competitive selection process.

However, several hundred applications were rejected on grounds that they were incomplete. Given the disastrous impact of rejection on their future, a number of applicants and professors called on the Québec Ombudsman to intervene.

The investigation revealed a number of problems: erroneous information in FCAR directives and administrative policies, incomplete files forwarded to FCAR by teaching establishments, files that were never sent, failure to keep information confidential, and unequal treatment of applications from university to university. In discovering that under FCAR regulations teaching establishments rather than students were the ones responsible for sending in properly completed applications, the Québec Ombudsman concluded that applicants should not be penalized for mistakes made by others, and that FCAR's refusal to reprocess applications for the 1996–97 competition was unacceptable. The organization's unbending application of the rules could not be justified under the circumstances.

The Québec Ombudsman recommended that the selection process be reopened for candidates whose applications had been rejected on wrongful grounds, that procedures and administrative regulations be reviewed, and that candidates be allowed to submit their applications directly to FCAR, since the Fund claimed that students had ultimate responsibility for them.

FCAR finally recognized the weaknesses in the system and agreed to reconsider the applications. Of the applicants reconsidered, thirty-eight were shortlisted, and nineteen were eventually awarded a substantial bursary. The Fund also took steps to ensure the situation would not repeat itself.

MINISTÈRE DE L'EMPLOI ET DE LA SOLIDARITÉ

An income security recipient called for jury duty in a criminal trial must be treated fairly.

An income security recipient was called for jury duty in a criminal trial. The trial lasted two weeks and the woman received the allowances and jury duty pay to which she was entitled (daily pay, transportation and meals). She informed her social aid officer, who advised her that her income security benefits would be reduced by the corresponding amount. Although the law provides that income security recipients can earn up to $100 in income without having their benefits cut, the agent considered that she was not entitled to the employment income exemption because jury pay and allowances did not constitute a salary. She complained to the Québec Ombudsman. He concluded that not only was it wrong that the woman be penalized for having done her duty as a citizen, but that the decision was based on a technicality that failed to take into account the spirit of the law. The Department accepted the Ombudsman's recommendation and restored the woman's full benefits.

MINISTÈRE DE L'ENVIRONNEMENT ET DE LA FAUNE

Analysis of projects involving livestock

In analyzing a pig breeding project, the Ministère de l'Environnement et de la Faune failed to examine the impact it would have on a peat bog adjacent to the planned facility. Although the Department complied with prevailing standards in issuing the authorization certificate, it did not take into account the fact that the project would be located right next to an environmentally sensitive ecosystem. Moreover, the Department had already recognized the bog as a potential ecological reserve.

The Québec Ombudsman also noted that certain official data used by the Department to analyze livestock production projects was out of date. Although the *Regulation respecting the prevention of water pollution in livestock operations* identified the municipalities lacking sufficient land to spread manure, the list was based on data from 1988–89. If the data were updated, certain municipalities could find themselves either below or above the legal manure limit, or right at the limit. This information is vital because it makes the difference between approval and rejection for new livestock production projects. Yet the list was reprinted as is in the new *Regulation respecting the reduction of pollution from agricultural sources*, which came into effect on July 3, 1997.

The Department has set up a committee to update the list. The group presented its report in July 1998 for approval by Department officials.

The Department authorized big pig farm operations on the basis of standards that legally allowed certain producers to avoid environmental impact studies.

The Québec Ombudsman was alerted by citizens, private environmental protection organizations and the media that large-scale livestock production projects were being exempted from the environmental impact study procedure administered by the Bureau d'audiences publiques sur l'environnement (BAPE).

In one case, permits were granted for a facility with a capacity of 599.6 hogs divided into two 299.8 unit buildings. In the other, the Department authorized a single producer to build nine buildings with a total capacity of 840 units divided into three 280 unit blocks. Local citizens felt the project should be considered as a single 840 unit facility, and that dividing it into three blocks did nothing to alter this fact.

In both situations, the promoters were accused of deliberately presenting their projects in such a way as to avoid environmental assessment. After investigating, the Québec Ombudsman concluded that the authorizations complied with existing standards.

Under the December 1980 *Regulation respecting environmental impact assessment and review*, all projects with a capacity of 600 animal units and over are subject to BAPE assessment, including those made up of facilities located within 150 meters of each other, but not individually exceeding the 600 unit limit. The *Regulation respecting the reduction of pollution from agricultural sources* also defines as a single farm a group of facilities no more than 150 meters from each other.

Upon consulting BAPE files, the Québec Ombudsman found that not a single project had been subject to public hearings since the implementation of the *Regulation respecting environmental impact assessment and review*. Given that the government had taken the trouble to implement standards and make provisions for BAPE to assess certain projects, it is not surprising that people believe there is a real environmental risk. It is also understandable that they argue the impact of a 599 unit is the same as that of a 600 unit facility, and that three 280 unit divisions in a confined area are equivalent to an 840 unit operation.

The Québec Ombudsman has asked the Department to review the adequacy of the standard and find another way to ensure that projects involving the construction of a large number of animal units in the same area are subject to public hearings, whether they are divided into separate blocks on the same farm or not.

The issue is an important one. In a document entitled *Les orientations du gouvernement en matière d'aménagement, de la protection du territoire et des activités agricoles*, authorities indicated that, as of June 1997, the focus on agriculture would lead to an increase in agricultural activities. This means that large-scale projects may well become more common. As a result, the Department has a duty to develop standards that oblige producers building or expanding large-capacity livestock facilities to go through the environmental impact process. The Québec Ombudsman is awaiting departmental reaction.

MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

Québec, a land of welcome?

Three physicians settled in Québec after practicing medicine in their countries of origin. They passed Canadian Medical Council appraisal exams, then the competitive exam of the Collège des médecins du Québec in both 1992 and 1993. However, they were not admitted to transitional internships or residency because they failed to finish among the top ten. Up until 1994, only the top ten finishers were selected. Moreover, because of the costs of preparing for the exams, the three candidates were obliged to work in related fields.

In response to demands from a group of foreign-trained doctors, the then future premier promised to integrate a larger number of doctors trained outside Canada and the United States. On December 23, 1994, the Minister of Health and Social Services issued a press release announcing that, of the group of doctors who had taken the 1994 exam, 28 candidates—eighteen in 1994 and ten in 1995—had been admitted to transitional internships and, subsequently, residency. It was also mentioned that the minister would release recommendations in early 1995 on ways of resolving the integration issue for good.

Thus, all the candidates who passed the spring '94 competitive exam by the Collège des médecins were admitted to transitional internships and later to residency without their ranking being taken into account.

Yet Order in Council no. 427–94 of March 1994 setting conditions for the exam administered by the College in spring '94 specified that only the ten candidates with the highest overall marks would be selected—the same criteria as in the 1992 and 1993 competitions. As the three doctors had already passed their exams in 1992 and 1993, they asked the minister to admit them to the transitional internship and to residency on the basis of the December 1994 press release and the premier's election promise. The minister turned down their request. The three then turned to the Québec Ombudsman to complain about the unfairness and arbitrary nature of the decision.

On January 15, 1997, the Ombudsman recommended that the Minister of Health and Social Services reconsider his decision since the rules had changed in 1994, creating a double standard. On March 21, 1997, the Minister advised the Ombudsman that he was upholding his decision on the grounds that conditions for admission to residency were only effective for the year in which they were approved. From the minister's standpoint, orders in council for a given year had no retroactive effect on policies, as this would be unfair. Other discussions took place, notably with the Department, which claimed that since many foreign-trained doctors were in the same situation as the complainants, it would be obliged to integrate them as well. Although a check with the College revealed that this was not the case, the decision remained unchanged. The three doctors wrote the College's most recent exam for foreign-trained doctors, but unfortunately failed to obtain 60% in each section. However, the orders in council of March and

April 1995 had established a new triennial policy requiring a passing mark of at least 60% in each of the two sections of the College exam, rather than an overall mark of 60% as in 1994.

The Québec Ombudsman felt that the complainants deserved the same treatment as the candidates who wrote the exam in 1994 and reiterated his recommendation to the minister.

In a letter dated June 25, 1998, the administrative committee of the Collège des médecins informed the complainants that it had authorized the chairman of the College to continue discussions with authorities in view of finding a solution. A meeting with the minister is scheduled to discuss the case.

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

Inmates should not have to constantly bear the brunt of chronic prison overpopulation.

An inmate from Chicoutimi complained to the Québec Ombudsman because he had been transferred from prison to prison eight times within a short period. At the time of his complaint, he had been at the Roberval prison for a week, and was about to be returned to prison in Québec City due to chronic overpopulation. Yet he had just been transferred from Québec City for the same reason.

Roberval authorities explained to the Québec Ombudsman that the inmate required closer supervision because of his behavior, and that this justified his transfer to a more secure facility like the one in Québec City.

The Québec Ombudsman finally convinced authorities to transfer the inmate to the Chicoutimi Prison on humanitarian grounds.

Why transfer an inmate for no reason?

A Cap-de-la-Madeleine resident was imprisoned in Trois-Rivières, then transferred to the Bordeaux Detention Center due to overpopulation. However, he had to appear at the Trois-Rivières courthouse for another offense. After the court appearance, Trois-Rivières prison officials wanted to return him to Bordeaux to complete his sentence. With his temporary absence scheduled to begin the day after his return to Montreal, the inmate asked to remain in Trois-Rivières so as to be released near his home town; this would avoid the transfer to Montreal and save on transportation costs. The Trois-Rivières facility turned down his request despite the efforts of the inmate's wife and lawyer, so he asked the Québec Ombudsman to intervene.

The Ombudsman convinced authorities that circumstances justified keeping the inmate in Trois-Rivières. Foregoing the transfer made it easier for him to return home and eliminated unnecessary inconvenience and expense for all parties, an important consideration in a period of budgetary restraint.

Prison authorities must ensure that the transfer of an inmate does not compromise his right to be heard.

An inmate at Rivière-des-Prairies whose parole had been suspended was scheduled to appear before the Commission québécoise des libérations conditionnelles on May 8, 1997, to explain his behavior.

Authorities decided to transfer him the day before his hearing. The inmate spoke to his parole officer, who advised him he was powerless to intervene. As a result, the hearing was postponed until May 27. The inmate complained to the Québec Ombudsman.

The Ombudsman concluded that such a decision failed to respect the inmate's rights. He obtained assurances from authorities that they would henceforth check inmates' scheduled appearances before proceeding with transfers in order to avoid delays and loss of rights.

RÉGIE DE L'ASSURANCE-MALADIE DU QUÉBEC

Legalism and equity don't always go together.

A dependent child residing in Canada since 1995 had obtained landed immigrant status, giving him the right to public health insurance. However, the child was in an unusual situation. His father, a political refugee, had been living in Europe for the past 10 years, and his mother could not be located. He had been residing in Québec since July 1996 with his aunt, who lived off income security.

In May 1997, the child received medical treatment. Hospital fees were billed to his aunt because the Régie had refused to renew the child's health insurance card. The Régie had changed its interpretation of the *Health Insurance Act* in November 1995, ruling that a child only had the right to insured services if one or both parents were landed immigrants. For the child to be insured, the Régie insisted that the aunt had to be declared the child's legal guardian by the courts. Distraught, she complained to the Québec Ombudsman.

Given the situation of the child and his parents, as well as the delays and costs involved in court procedures, the Ombudsman requested that the child be treated as if his aunt had parental authority in order to avoid referring the issue to court. The Régie approached the hospital, which agreed to cancel its claim. This is an example of an intervention in the name of equity.

A patient should not have to pay for an examination requested by her doctor and for which she is not responsible.

A woman suffering from severe headaches and neck pain had to undergo a magnetic resonance imaging scan at the request of her doctor. This procedure is normally covered by the Régie de l'assurance-maladie so long as it is provided in a public facility that is part of the health care network.

However, due to physical particularities, the woman could not use the hospital machine and had to go to a private clinic, the only facility possessing open MRI equipment. The Régie refused to reimburse the cost of the procedure because it did not take place in a public establishment, leaving the woman no choice but to pay $1,050 out of her own pocket, an amount she subsequently claimed from the Régie. She then complained to the Québec Ombudsman.

The Ombudsman pointed out that this was an exceptional case and that the woman should not have to suffer the consequences of a situation over which she had no control. The Régie agreed to repay $212 as per the rate in effect in public establishment; the balance was covered by hospital insurance.

SOCIÉTÉ DE L'ASSURANCE AUTOMOBILE DU QUÉBEC

Penalizing one individual for another's negligence

A man purchased a vehicle from another individual. The vendor and buyer visited a Société d'assurance automobile du Québec office to have the vehicle's registration transferred. The employee on duty refused to process the change because the vendor owed money to the Société. As a result, the buyer, who had no outstanding debts toward the Société, was unable to purchase the vehicle. He complained to the Québec Ombudsman.

The Ombudsman asked the Société to end this abusive practice. In future, vehicle registration will be transferred even if the vendor owes the agency money.

When the Société de l'assurance automobile du Québec failed to enter to a change of address on all relevant documents, a woman and her spouse were put through a real ordeal.

A woman informed the Société of an address change for her and her spouse effective June 30, 1994. Little did she suspect that the change would only be made on their driver's licenses, and not on their vehicle registration. Because the woman and her spouse co-owned their car, the Société considered it to be registered in the name of a company bearing a special number.

It wasn't until a police check in April 1997 that the woman realized her vehicle registration had expired two years earlier because the renewal notice had been sent to her old address.

She went to a Société service center to renew her registration. However, because registration fees had not been paid for two years, the Société required the woman to have her vehicle inspected. Furthermore, to drive to the garage, she was forced to take out temporary registration at a cost of $96.

To prevent the situation from reoccurring, the Société also suggested that vehicle ownership be transferred to one of the two spouses. The woman therefore executed an unrequited transfer of ownership to her spouse and applied for a sales tax exemption from the Ministère du Revenu du Québec.

Much to her spouse's surprise, the Ministère du Revenu sent him a notice of assessment for $250. The Department maintained that to make someone the owner of a vehicle as a gift, the vehicle had to be fully paid for. In exasperation, the woman contacted the Québec Ombudsman.

The investigation revealed that the Société was already aware of the inconvenience suffered by vehicle co-owners because of its policy. It confirmed that it was looking into making changes.

The Québec Ombudsman finally succeeded in having the Société reimburse the $96 and withdraw its claim for payment of motor vehicle registration fees for the two years in question. The Ministère du Revenu also agreed to withdraw its claim.

SOCIÉTÉ D'HABITATION DU QUÉBEC

A restrictive interpretation of "moving expenses"

A homeowner applied under the Home Adaptation Program of the Société d'habitation du Québec for financial assistance to renovate her residence to meet the needs of her handicapped daughter. This program offers subsidies for improving access to one's home if a household member has functional limitations.

As the owner of the building, she was eligible for a maximum grant of $16,000. However, the cost was estimated at $20,000. In the event that the cost of adaptation work nears the maximum $16,000 ceiling, the Société d'habitation can authorize the person to move. However, moving costs (which cannot exceed $5,750) along with the cost of adapting the new residence must be significantly lower than the cost of adapting the current residence.

The Société authorized the woman to move to a new house where an elevator and outdoor ramp would be installed, thereby significantly reducing adaptation costs. Although moving expenses were $7,000 (moving costs, notary, real estate agent), the Société determined that it could reimburse only $5,750—the cost of the movers and settling-in expenses such as phone and cable hookups. The woman turned to the Québec Ombudsman.

After examining the case, the Ombudsman determined that the Société's interpretation of the term "moving expenses" was overly narrow. In fact, the program guide specifies that the Société will reimburse up to $750 in settling-in expenses, such as telephone connections, and up to $5,000 in "moving expenses." Because these expenses are not defined, there is no reason that the program be limited to paying for the movers. What's more, by recognizing settling-in expenses as "moving expenses," the Société has no justification for refusing to reimburse expenses like notary fees or real estate agent commissions.

The Québec Ombudsman checked the policies of other government organizations. The Office des personnes handicapées, which had run the program up until 1991, had reimbursed expenses other than transportation costs. Moreover the Ministère du Revenu recognizes transportation and storage expenses as well as the costs associated with selling a house (advertising, notary, real estate agent) for tax purposes.

At the Québec Ombudsman's request, the Société eventually agreed to provide the maximum reimbursement for all moving-related expenses.

INACTION

When acting on another's behalf, take the same care as when acting for yourself. This is how a careful, diligent person would behave. Government employees may, through their inaction, not only deprive citizens of their rights, but also cause harm. Inaction by government employees may thus lead to the exclusion of citizens.

The *Social Contract* lists the following rules to avoid inaction:

4.2 Take the initiative to ask citizens for the paperwork or details missing from the applications or claims they make rather than turning down or holding up their applications without further explanation.

4.3 Help a citizen making a claim to present a complete file, so that the decision reflects all relevant information and circumstances.

5.3 When developing a program, reduce as much as possible the risk of failures and shortcomings arising from poor administrative practices.

6.3 Take into account the reasons for client dissatisfaction when changing a service or program. Do not base change solely on the dissatisfaction of personnel.

7.5 When replying to inquiries, direct citizens to the appropriate service rather than referring them to various resources without knowing which one will provide a useful answer.

8.8 Intervene rather than stand by when other employees are responsible for a delay, and encourage them to act with diligence.

8.9 Determine the real causes of a deficiency or act of negligence, so as to avoid systematically using the excuse of budget cuts to justify shortcomings.

COMMISSION DE LA SANTÉ ET DE LA SÉCURITÉ DU TRAVAIL

The separation of duties in an organization cannot be used as an excuse for failing to inspect a workplace.

In November 1997, an auto body worker suffered from carbon monoxide poisoning caused by noxious vapors in an unventilated workshop.

He submitted a claim to the Commission de la santé et de la sécurité du travail and, at the same time, asked the Commission to inspect the shop. The claims officer refused because the company was not located within the territory under his responsibility.

The Québec Ombudsman considers that the Commission must diligently carry out the duties assigned by the legislature to prevent accidents and improve workplace safety. Inspectors must not wash their hands of a problem on the grounds that it is not in their territory. The Commission admitted that an error had been made and the matter was referred to the supervisor of the region in question, who immediately dispatched an inspector to the workshop.

A pregnant worker lost her rights because her file was not checked.

In May 1997, a pregnant worker's doctor authorized her protective re-assignment to other duties. The certificate listed the risks related to her job: working in a standing position for over six hours; frequent twisting, bending and stretching; working frequently with raised arms; handling boxes. The doctor recommended that the worker not stand for any more than six hours a day, that she not lift objects weighing over 15 kilograms, and that she not lift objects weighing between 10 and 15 kilograms more than ten times a day. In addition, he recommended that she avoid twisting, bending, stretching her upper body and other similar movements after her twenty-seventh week of pregnancy.

Since the Commission de la santé et de la sécurité had accepted the certificate, the employer reassigned her to other duties without, however, taking the physical restrictions into account. The doctor provided another certificate on June 10, and the worker was reassigned once again. On July 13, the doctor declared that she was unfit for work.

Without checking any further, the Commission concluded that she had stopped working because of her state of health and not because of the risks associated with the work she was doing. The Commission refused to pay the compensation to which she was entitled.

The Québec Ombudsman asked the Commission to update her file by obtaining the appropriate information. The Commission realized that her duties were in fact contraindicated and that she had not stopped working because of health problems. She finally received her benefits.

MINISTÈRE DE L'AGRICULTURE, DES PÊCHERIES ET DE L'ALIMENTATION DU QUÉBEC

Information is even more important when the health of citizens is at risk.

In December 1996, a consumer purchased some ground beef in a butcher shop. Later, she found particles of metal in a dish she had prepared using the beef. She notified the Service d'inspection des aliments of the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation du Québec.

The Department inspected the butcher shop in January 1997 and found metal particles in the ground beef. The "head" of the meat grinder contained metal dust. The meat was thrown out without any samples being kept and the meat grinder was repaired. However, the citizen was never contacted by the Department. As she had expressed fears about her health and that of her family to the Department, she expected that officials would provide her with the results of the investigation so that she could pass them on to her family doctor. She contacted the Department where an official informed her that animals shot with lead projectiles may occasionally have bullets lodge in the body and subsequently show up in the meat. Lead dissolves in the human body and may cause serious health problems. When she asked the Québec Ombudsman to intervene, the citizen insisted that the frozen food she had prepared be analyzed. The Ombudsman arranged for the analysis, and the Department concluded that the particles were not lead.

The Québec Ombudsman's intervention highlighted major shortcomings in how consumer complaints are handled and followed up on as well as what information consumers receive. The situation was all the more serious in cases where the health of citizens was at stake. The Department has therefore altered its policy so that officials dealing with consumer complaints are in charge of every step of the process.

MINISTÈRE DE L'ÉDUCATION

A serious act of negligence by a government official penalizes a needy student.

A junior college (CEGEP) student had his employment insurance benefits extended for the 1995 summer and fall semesters and received financial assistance under the Subsidy and Loan Program for Workers (SPRINT), which automatically excluded him from the student loans and bursaries program. However, the CEGEP told him that he could apply for a loan or bursary in the winter session if he decided to complete his studies because he would no longer be eligible for employment insurance or the SPRINT Program. Since he was the father of two children, and his spouse was pregnant with a third, he would be eligible for substantial assistance.

He therefore applied to the Ministère de l'Éducation for financial assistance for the winter session only. On the application form, he checked off the box that read: *My application for financial assistance only applies for the 1996 winter session, i.e., I do not wish to receive financial assistance for the current session*; and, in Section 6 of the form, he indicated that he had participated in the SPRINT program during the 1995 summer and fall sessions.

In February 1996, an official from the Department contacted the student because he had not included his marriage certificate with the application as requested. The official also asked him to provide confirmation of the semester for which he was applying for assistance. The student acquiesced and said that he would also include a letter explaining why he was only applying for assistance for the 1996 winter semester. In his letter, he once again explained the circumstances of his participation in the SPRINT program.

Despite all this, a bursary was granted for the summer, fall and winter semesters. On receiving the cheque, the person in charge of financial assistance at the CEGEP failed to notice the error and passed the cheque on to the student, who cashed it in good faith. It was only when the Ministère de l'Éducation verified the student's income with the Ministère du Revenu that the error was discovered. The Department then claimed back the excess amount of the bursary.

The student had fulfilled his obligations to the Ministère de l'Éducation by providing the relevant information and documents. As a result of an administrative error that he could not reasonably have detected since he had never applied for a loan or bursary before, he received financial assistance for the 1995 summer and fall semesters. Because of the error, which had disastrous consequences for his family, the Québec Ombudsman asked that the claim be canceled. Officials refused, arguing that it would be unfair to other students and that they must apply the law. In addition, they said that if the student had paid attention to the notice and calculations he would have uncovered the error because the three semesters for which the assistance had been granted were indicated on the notice.

To date, the Department still refuses to cancel the claim and has added to the debt by charging interest at an annual rate of 5%, which was increased to 9.625% on July 1, 1998. By acting in this way, the Department benefits from its own errors and continues to make the student and his family assume the consequences.

The tip of the iceberg: one problem hid three others

A mother of four children went back to school full-time in 1996–97. She had full custody of one child and shared custody of the other three. Prior to the introduction of the integrated child allowance in 1997, the Ministère de l'Éducation automatically included family allowances and child tax benefits in the income of students with one or more dependent children. In cases of shared custody, if students could prove that the allowances and benefits were paid to their ex-spouses, the Department recalculated the students' incomes. In February 1997, the student in question asked the Department to recalculate her 1996–97 income based on documents proving that she had received no government allowances for the three children for whom she had shared custody. She also informed the Department, backed up by supporting documents, that the alimony and work income she was receiving were lower than that indicated on the confirmation of financial resources form she had completed in December 1996. Because the Department was taking too long to recalculate her income, she complained to the Québec Ombudsman.

During his investigation, the Québec Ombudsman found that the Department had in fact recalculated her income. Although it had adjusted the amount for family allowances, it had not taken into account the decrease in support payments and work income she had reported, despite subsequently verifying her income with the Ministère du Revenu and confirming the decrease. Furthermore, the Québec Ombudsman discovered other problems of which the student could not have been aware.

Under the *Regulation respecting financial assistance for students*, the Department counts 60% of a student's work income when calculating a bursary. There are, however, exceptions. For example, if a student was not enrolled in a full-time program during the winter session preceding the year the bursary is granted, only two-thirds of the 60% of work income is used in the calculation. This is the case for people returning to school. Yet, the Québec Ombudsman noted that for 1996–97, the Department based its calculations on 60% of the complainant's work income rather than two-thirds of 60% even though she was not a full-time student in winter 1996.

The investigation also revealed that when the student applied for financial assistance, she had completed a personalized form. The Department has been sending personalized forms to students since 1994. These documents already contain information from students' files. In order for students to receive personalized forms, they must have applied for assistance the preceding year, which the student had done in 1995–96. At that time, the Department had not granted her assistance because it had determined her work income to be sufficient.

The Québec Ombudsman noted that, unlike the non-personalized form, the personalized form contained no space where students could indicate their occupation if they had worked during the previous winter session. The Department was therefore unable to calculate the income of such students correctly, meaning that some of them were treated unfairly.

The Québec Ombudsman asked the Department to recalculate the complainant's financial assistance, taking into account the decrease in support payments and work income as well as the fact that she was not a full-time student in the winter session preceding her application. The $770 bursary initially awarded was thus increased to $3,100.

In addition, the Québec Ombudsman got the Department to correct the personalized forms it was using. For the sake of fairness, the Ombudsman also asked the Department to review the cases of students whose original applications for assistance had been turned down because their incomes were sufficient and who had received and completed personalized application forms the following year. He also asked the Department to take appropriate corrective action for students who had been unfairly treated. The verification is currently underway.

MINISTÈRE DE L'EMPLOI ET DE LA SOLIDARITÉ

Officials cannot offhandedly refuse to check a citizen's explanations, especially if the refusal leads to a loss of rights.

On April 24, 1997, an income security recipient driving a scooter was hit by a car. When the police were called to the scene, they discovered that he was wanted for a crime committed in Ontario. The police immediately arrested him and turned him over to the Royal Canadian Mounted Police, who incarcerated him in an Ontario prison the very same day to serve his two-month sentence.

When he was released on July 3, the man returned to Québec and reapplied for income security, which was granted. However, the Department claimed back the assistance paid for May on the grounds that he had not notified the Travail-Québec office of his detention. Despite his explanations, the Department considered that the applicant had acted in bad faith. It therefore deducted $112 from his monthly benefits instead of $56 until his debt was paid off, and also imposed a $100 penalty. The man turned to the Québec Ombudsman.

In investigating the case, the Québec Ombudsman was told by the complainant that he had been in no position to notify the Department. He claimed he was incarcerated without notice, transferred to six prisons in two months and hospitalized as well. The Ombudsman felt that if this were true, the Department could only hold back $56 because the complainant had been acting in good faith. He therefore asked the Department to check the man's allegations with Ontario prison authorities. Upon verification, the Department discovered that the man had been telling the truth and agreed to alter its decision.

MINISTÈRE DE LA JUSTICE

A citizen loses his rights when officials fail to do their job.

In early 1995, a burglar broke into a man's home. The following July, the offender was ordered, among other things, to pay the victim $390 in damages.

In subsequent months, the man contacted the Ministère de la Justice to find out when he would receive the money. He was told to wait. In January 1997, the man learned from the Department that the statute of limitations had expired and that he no longer had the right to the money. The victim then asked the Québec Ombudsman to intervene.

The investigation revealed that, despite the court order, the Department had not acted to ensure the offender paid the victim. The victim was not informed of the recourse available to him for collecting the money himself. In addition, the offender was not charged with breaking the probation order. The Québec Ombudsman got the Ministère de la Justice to pay the victim the amount that was owing to him.

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

Sûreté du Québec

When a new law to be administered by the Ministère de la Sécurité publique is adopted, the Department must ensure that its employees receive the relevant information and documents as quickly as possible. A citizen almost lost his job because this was not done.

In July 1997, a powderman—someone who manipulates explosives—called on the Québec Ombudsman because he was afraid that he would soon lose his job. Government employees would not renew the permit required by his employer because they did not have the text of the recent amendments to the law. They were hesitant about renewing permits without knowing whether they were contravening the law or not.

The Québec Ombudsman's investigation revealed that the legislative amendments had been adopted on June 12, 1997, and had come into effect on June 19, 1997. Yet twenty-six days after the bill had been adopted, Department officials had apparently still not received the official texts, which were then sent to them by the office of the Québec Ombudsman. The permit was finally renewed.

ERRORS

To err is human, even for government employees! Errors are often made in good faith, whether out of ignorance or inadvertently. But if government employees have their facts wrong, even if the citizen supplied the facts, the consequences can be serious—citizens can lose their rights.

The *Social Contract* lays down several rules and guidelines for avoiding administrative errors:

1.4 Indicate clearly to clients the rights and recourse available to them with respect to an administrative decision, including recourse to the Québec Ombudsman or to any other public entity concerned with the protection of rights.

1.7 Get the opinion of people who are representatives of the client group when preparing forms and information folders, and use simple, everyday language in the wording of these documents.

3.3 When the decision-making process is discretionary, establish a framework for decisions using criteria and measures that allow their objective application.

3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.

3.6 Have the means to act, where applicable, on a purely equitable basis, when exceptional circumstances so require.

4.1 Avoid making decisions without giving citizens the chance to express their point of view or the opportunity to provide all relevant information.

4.2 Take the initiative to ask citizens for the paperwork or details missing from the applications or claims they make, rather than turning down or holding up their applications without explanation.

4.3 Help a citizen making a claim to present a complete file, so that the decision handed down reflects all relevant information and circumstances.

5.3 When developing a program, reduce as much as possible the risk of flaws and deficiencies that arise from poor administration.

6.3 Take into account the reasons for client dissatisfaction when changing a service or program. Do not base change solely on the dissatisfaction of personnel.

6.5 Eliminate unnecessary procedures and formalities as well as all unnecessary paperwork.

8.9 Determine the real causes of a deficiency or act of negligence, so as to avoid systematically using the excuse of budget cuts to justify shortcomings.

8.13 Bring decision-making as close as possible to clients.

MINISTÈRE DE L'ÉDUCATION

When a student who was meant to receive a bursary to help pay her tuition learned a full year after the fact that authorities had sent her name to the wrong educational institution, she was still owed the money anyway.

A student of African origin applied for Québec student equivalency status for tuition purposes for the 1995–96 school year. This falls under a Ministère de l'Éducation program for exempting foreign students from the additional tuition they normally have to pay. To be entitled, students must be referred by the ambassadors of their home countries and meet the requirements of an agreement between their country and Québec. If the conditions are met, the bursaries are granted and the Department forwards a list of successful applicants to each educational institution as well as to those who applied. Since her name was not on the list, the student figured she had been turned down and therefore did not request exemption from fees.

For 1996–97, she went back to her embassy, which informed her that her application had been successful in 1995–96, but that her name had been inadvertently put on the list for a different university. She thus asked the university where she was enrolled to pay her the bursary, but she was turned down for 1995–96 on the grounds that the Department did not authorize retroactive bursaries. When she complained to Department officials, they gave her the same answer. So she went to the Québec Ombudsman.

The investigation confirmed that the Department had awarded an exemption bursary for 1995–96 in the student's name, but for a course of study in a different university. Had it not been for the incorrect information over which the student had no control, she would have been exempted from paying additional tuition.

The Québec Ombudsman convinced the Department that the student should not have to pay for someone else's administrative error. The Department advised the university that the student was retroactively entitled to her bursary.

MINISTÈRE DE L'EMPLOI ET DE LA SOLIDARITÉ

Miscalculating someone's income can make a world of difference.

In September 1996, an elderly woman suffering from Alzheimer's disease moved into a nursing home. On the basis of her income, the Ministère de la Sécurité du revenu (now called the Ministère de l'Emploi et de la Solidarité) set her rent at $1,250 per month. But all she earned each month was $940—her Québec pension, her old age pension and an out-of-country pension of $144).

Her son asked the Department for an explanation. It replied that his mother declared a lower income for nursing home purposes than when she applied for her old age pension; the Department presumed that the woman had an extra source of income she had not declared and therefore set her rent at the maximum amount. Her son complained to the Québec Ombudsman.

The investigation revealed that his mother had declared income of $5,600 on her 1995 tax return. Moreover, her federal pension for the same year had been set at $560 a month based on going rates, which implied she had income of about $7,000. It was this difference in declared incomes that led authorities to conclude she had failed to declare all her income for nursing home purposes. The Québec Ombudsman discovered that federal authorities, in determining her old age pension for 1995, had based their calculations on her 1994 income when her out-of-country pension had been higher. In actual fact, the pension was reduced in 1995. The Department was thus forced to reduce her rent to $820 and reimburse her for the excess rent she had paid in September.

UNREASONABLE DELAYS

Justice delayed is often justice denied. Undue delays are not only frustrating for people faced with legal proceedings, but may also lead to serious financial loss. People who have to wait five years for their day in court are truly wronged.

The same is true of administrative delays caused by failures to act or make decisions in a timely fashion. Unreasonable delays are often caused by complicated bureaucratic procedures, a certain negligence, a lack of willingness to act, or unreasonable requirements imposed by the government.

To prevent unreasonable delays, the *Social Contract* proposes the following rules:

1.2 Give citizens all the information they need in a timely manner.

5.3 When developing a program, reduce as much as possible the risk of flaws and deficiencies that arise from poor administration.

7.2 Make relations with citizens as human and personal as possible.

7.4 Do unto others as you would have them do unto you.

8.6 Provide services and information, and convey decisions, within a reasonable length of time.

8.7 Continuously seek to shorten waiting times.

8.8 Intervene rather than stand by when other employees are responsible for a delay, and encourage them to act with diligence.

8.13 Bring decision-making as close as possible to clients.

MINISTÈRE DE L'ENVIRONNEMENT ET DE LA FAUNE

Raising white-tailed deer for consumption—a saga that began over ten years ago

The Ministère du Loisir, de la Chasse et de la Pêche (now called the Ministère de l'Environnement et de la Faune) has been issuing captive animal permits for raising white-tailed deer for over fifteen years. In addition, the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation and Agriculture (MAPAQ) and Agri-food Canada have looked favorably on this type of activity for over ten years. In 1996, there were some 287 such operations in Québec. However, paddock slaughtering and the sale of venison are forbidden. The only possible income for producers has been the sale of live animals for reproduction or export, for sport hunting in permitted zones, and for certain agrotourism activities.

In 1993, faced with the impasse caused by the conflict between supporters and opponents of deer raising, the Ministère de l'Environnement et de la Faune placed a moratorium on captive animal permits. In December 1995, following discussions between the various stakeholders, the Department even envisaged eliminating this type of animal production by the year 2000.

In May 1995, a white-tailed deer breeder with a captive animal permit denounced the government's lack of consistency and the unreasonable time it was taking to come to a decision. The delay was placing him in financial straights because of the investments he had made. The same problem was also raised by MAPAQ. The breeder, who had believed that he would eventually be permitted to slaughter his animals and sell the venison, hoped a quick decision would be forthcoming.

The Québec Ombudsman considered that the saga had lasted too long and that the delays were unacceptable, especially in view of the fact that the already tenuous financial circumstances of the breeders were deteriorating. After noting that the delays resulted mainly from problems of coordination and certain disagreements, he succeeded in convincing the various government departments involved to make the appropriate decisions.

On December 18, 1996, the Minister of the Environment and Wildlife thus announced a three-year pilot project for raising white-tailed deer in captivity for the purpose of selling the venison. After the necessary regulatory measures were adopted, slaughtering the deer or having them paddock-slaughtered and selling the venison would be permitted for the duration of the project.

A committee made up of representatives from the various departments and interested associations set to work planning the project, and several meetings took place in 1997. However, in September, the Québec Ombudsman had to intervene again with senior administrators to get them to speed up the process, which they did. In October 1997, until the regulatory measures could be adopted, breeders were issued the management certificates already provided for under the law authorizing them to paddock-slaughter deer under certain conditions.

After a further lengthy delay, the Ministère de l'Environnement et de la Faune finally published a draft regulation in the Official Gazette of July 8, 1998, for consultation purposes amending the Regulation respecting animals in captivity and, among other things, authorizing the raising and slaughter of white-tailed deer. In another development, on September 9, 1998, the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation issued a draft regulation amending the Regulation respecting food in order to permit the processing of Cervidae by slaughterhouses.

These regulatory amendments mark a long-awaited conclusion to the pilot project announced by the minister in December 1996.

MINISTÈRE DE LA JUSTICE

An unreasonable delay was caused by an unreasonable requirement.

A single mother with three children turned to the Québec Ombudsman when a courthouse support payment collector refused to issue a $1,300 cheque to her. At the time, collecting support payments was the responsibility of the Ministère de la Justice, not the Ministère du Revenu.

In January 1996, she was to receive a cheque from the collector covering support payment arrears. However, the cheque was mailed to her former address and stolen. After she had met the requirements of the Ministère de la Justice, government officials told her—18 months later—that she would have to report the theft to the police. She turned to the Québec Ombudsman for help.

The Québec Ombudsman intervened with the Department to get her cheque issued without delay. He considered as unreasonable both the delay and the requirement that she report the theft when she was not the victim.

MINISTÈRE DES RELATIONS AVEC LES CITOYENS ET DE L'IMMIGRATION

VITAL STATISTICS REGISTRAR

A bureaucratic delay was caused by the improper processing of an application for a birth certificate.

A citizen who now lives in Alberta asked the Québec Ombudsman to intervene to help get her birth certificate from the Vital Statistics Registrar, which had lost all trace of her birth in Québec.

Her application was turned down twice, even after she had sent the Vital Statistics Registrar a certified copy of the birth certificate issued by the Ministère des Affaires sociales attesting to her identity and her age, as this Department was formerly in charge of doing.

She was informed that the birth certificate issued by the Department could be used to enter her birth in the vital statistics registry if she had a copy of it. If not, she would have to pay $100 for a late entry. She complained to the Québec Ombudsman.

As the citizen's file was complete, the Vital Statistics Registrar immediately and without charge entered her birth in the registry. However, in order to avoid such errors in the future, the Québec Ombudsman asked that officials at the Vital Statistics Registrar be reminded of the late entry procedure, and suggested rewriting the standard letter sent to citizens to make it more detailed, especially with regard to required documents and fees.

ACCESS TO GOVERNMENT SERVICES

It is sometimes difficult, or completely impossible, for citizens to gain access to government services. When this happens, citizens lose rights guaranteed to them in the legislation that called for the services in the first place.

The *Social Contract* recognizes access to services as a basic right and sets down the following rules in this regard:

2.1 Implement reception and information services promoting a personalized and respectful approach to dealing with individuals, and one that also takes into account the limitations of older or handicapped client groups, as well as linguistic barriers.

2.2 Plan telephone service in such a way as to be able to meet demand as efficiently as possible, so that citizens are not faced with overloaded telephone lines.

2.3 Only use interactive voice response systems when these can better serve clients and provide more complete information.

2.4 Ensure that office setup respects the public's right to privacy in facilities where public services are delivered.

2.5 Ensure that office setup is not a barrier to access to government services for people with physical disabilities.

2.6 In determining office hours, make allowance for new social and family realities.

2.7 Seek to provide one-stop service and, as needed, consider amalgamating administrative divisions if this can contribute to improving client accessibility and service quality. On the other hand, do not at all costs maintain an operation or unit of questionable relevance.

6.5 Eliminate unnecessary procedures and formalities as well as all unnecessary paperwork.

8.13 Bring decision-making as close as possible to clients.

SOCIÉTÉ DE L'ASSURANCE AUTOMOBILE DU QUÉBEC

A citizen was denied access to a service simply because the computer system was not set up to issue temporary licenses. Computers are supposed to make life easier for citizens, not more complicated.

In November 1997, the Société de l'assurance automobile (SAAQ) informed a man that he could soon take advantage of a change to the law. People whose licenses had been suspended for impaired driving would be able to apply for conditional licenses and use their vehicles under certain conditions, notably by installing an ignition lock. At first, he was delighted to hear about this new provision, set to come into force on December 1, 1997. However, his enthusiasm was short-lived.

Since his license had not been renewed for three years, he had to retake his driver's test, which meant he needed a temporary license. But since his license was suspended, SAAQ's computer system would not issue one to him. That meant he could not take advantage of the amendment to the legislation.

Following the Québec Ombudsman's intervention, SAAQ issued the temporary license, and the man took his driver's test and obtained his conditional license. The Ombudsman asked SAAQ to rectify matters so that there would be no more problems caused by the inadequacies of the computer system.

AN ILL-INFORMED CITIZENRY

Well-informed citizens are not only free to exercise their rights but, if necessary, can insist that they be respected.

The government has a duty to keep the general public well informed, and the right to information is enshrined in the *Charter of Human Rights and Freedoms*. If the government does not ensure that the public is well informed, the Charter is worth less than the paper it is printed on.

To encourage the adequate and timely supply of information, the *Social Pact* proposes the following rules:

1.1 Inform citizens of decisions that concern them, taking care to explain the reasons for the decisions in terms that can be understood.

1.2 Give citizens all the information they need in a timely manner.

1.3 Ensure, where applicable, that citizens clearly understand the information conveyed to them.

1.4 Indicate clearly to clients the rights and recourse available to them with respect to an administrative decision, including recourse to the Québec Ombudsman or to any other public entity concerned with the protection of rights.

1.5 Promote the publication of government information, and consider secrets a real exception to the general rule.

1.6 Consult the client group concerned when government programs are developed and implemented, as well as when changes are made to these programs.

1.7 Get the opinion of people who are representatives of the client group when preparing forms and information folders, and use simple, everyday language in the wording of these documents.

4.2 Take the initiative to ask citizens for the paperwork or details missing from the applications or claims they make rather than turning down or holding up their applications without further explanation.

4.3 Help a citizen making a claim to present a complete file, so that the decision handed down reflects all relevant information and circumstances.

6.1 Survey client group in order to establish who uses the service and what their needs and expectations are.

6.2 Create user committees.

6.3 Take into account the reasons for client dissatisfaction when changing a service or program. Do not base change solely on the dissatisfaction of personnel.

6.4 Set up advisory committees made up of employees who are in direct contact with users.

8.10 Draw up a detailed code of ethics that is practical and not limited to generalities and wishful thinking; make clients aware of the code.

INSPECTOR GENERAL OF FINANCIAL INSTITUTIONS

How can you call a government department that won't reveal its phone number?

For the third consecutive year, a citizen received the same invoice from the Inspector General of Financial Institutions (IGFI). As she had already paid the amount claimed and had proof, she tried contacting IGFI to have her file updated. However, the invoice listed neither the name nor the telephone number of the person to contact for additional information. She asked Bell Canada for the toll free number of the organization but was told that IGFI was not listed. Exasperated, she asked the Québec Ombudsman to intervene.

The Québec Ombudsman not only got the erroneous claim canceled but ensured that in future citizens would have easy access to IGFI's toll free number. He was assured that from now on the number would be indicated on invoices so that citizens would be able to contact the Department.

MINISTÈRE DU REVENU

The guide for filing tax returns must contain all key information.

A taxpayer prepared his 1996 tax return in March 1997. Since he believed that he met all the conditions, he asked for a $1,800 accelerated refund from the Ministère du Revenu. After waiting several weeks, he contacted the Department and was told by an official that he did not appear to be eligible for the accelerated refund, but was given no further explanation. He therefore turned to the Québec Ombudsman.

The investigation revealed that the accelerated refund was refused because the taxpayer had declared bankruptcy in 1996. While it is true that taxpayers who declare bankruptcy during the taxation year are not eligible for accelerated refunds, this information does not appear in the personal income tax guide.

Since the Québec Ombudsman considers that the government must provide adequate information, he asked that the guide be revised accordingly.

If the Department tells taxpayers what it intends to do, it must notify them when it changes its mind.

The owner of a revenue generating building had a tax liability. Under the law, this authorizes the Ministère du Revenu to seek reimbursement by seizing rents paid by tenants. However, the owner noted that the Department was unable to seize the rent of one tenant because the individual in question had left without notice. The Department was negligent in not notifying the owner in a timely fashion. He was thus unable to sue the tenant to recover the rent and, in addition, was responsible for paying the entire amount of his debt to the Department.

The Québec Ombudsman recommended that the government notify taxpayers of developments in their files so that they can take appropriate action. The Department agreed to alter its policy. After notifying taxpayers that it intends to take recourse against a third party, the Department will in future notify taxpayers of any changes in its decisions.

MINISTÈRE DU REVENU AND MINISTÈRE DE L'EMPLOI ET DE LA SOLIDARITÉ

A person on income security was not notified that the Ministère du Revenu was collecting income support in her name.

A court granted $800 a month in income support to a woman, who was never able to collect it. Destitute, she applied for social aid and began receiving benefits of $590 a month. She did not understand why the Ministère du Revenu had done nothing to get the income support paid. She contacted the Ministère du Revenu to find out how the income support could be collected. Since she was an income security recipient, officials refused to give her the information. Discouraged, she turned to the Québec Ombudsman.

As it turns out, the Ministère du Revenu had been collecting the support payments for a certain time and had been turning the money over to the Ministère de l'Emploi et de la Sécurité (MES). However, because of a lack of communication, the citizen was not notified and MES continued to pay income security to her. The Québec Ombudsman intervened and got the Ministère du Revenu to pay the support payments directly to her.

ADMINISTRATIVE INCONSISTENCIES AND DISPARITIES

Depending on which office citizens approach, they can be supplied with different or contradictory information on the same government program. Occasionally, Departments adopt mutually exclusive standards or policies. Sometimes decisions made by one Department cancel out those of another. In the end, citizens are the ones who suffer from any negative impacts.

To help prevent contradictions and inconsistencies, the *Social Pact* proposes a number of rules:

4.4 Reject all forms of partiality in decisions that are made and any pursuit of illegitimate objectives. Avoid all conflicts of interest.

4.5 Avoid all forms of discrimination or unequal treatment.

5.3 When developing a program, reduce as much as possible the risk of flaws and deficiencies that arise from poor administration.

7.5 When replying to inquiries, direct citizens to the appropriate service rather than referring them to various resources without knowing which one will provide a useful answer.

MINISTÈRE DE L'ENVIRONNEMENT ET DE LA FAUNE

Although groundless, a citizen's complaint reveals regional disparities in rates charged by private water distribution system operators.

The Ministère de l'Environnement et de la Faune authorized a private water distribution system operator serving a condominium housing complex to hike his rates in accordance with the regulation. The customers disputed the rate hike and alleged that the Department had not taken into consideration who actually owned the water distribution system at the time. They turned to the Québec Ombudsman.

The investigation revealed that the operator had included documents with his rate change application proving his property rights. He had informed the condominium owners via a public notice drawn up in accordance with the regulation. Although the rate setting procedure was somewhat flawed, the Department was able to justify its calculations, and the Québec Ombudsman sided with it.

However, the Ombudsman also noted that the rate setting mechanisms varied from one administrative region to another. He asked the Department to pay careful attention to such regional disparities and to correct the situation in order to reduce the number of inconsistent decisions. The Department has drafted a procedure for rate hike applications that is slated to come into force in the near future. Citizens who wish to contest rates will thus be able to do so before the Department's commissioner-investigator. The Québec Ombudsman is satisfied with this solution.

MINISTÈRE DE LA JUSTICE

Practices for reaching fine payment agreements with citizens vary from courthouse to courthouse. Criteria differ. Some jurisdictions accept verbal agreements, others require written ones. A confusing mess for a citizen, especially when his letter was lost by the Department.

A citizen received two notices of judgment from two different courthouses declaring him guilty of infractions under the *Highway Safety Code*. Because he was unable to pay the fines in full, he came to payment agreements with the collection officers at the Drummondville and Trois-Rivières courthouses.

The agreement with the Drummondville collection officer was verbal while the Trois-Rivières officer required a written agreement. The citizen mailed in the written agreement and enclosed the first payment. The payment was forwarded to the Accounting Department. However, the collection officer never received the written agreement.

When the deadline for paying the fine arrived, the Trois-Rivières collection officer, without trying to contact the man, asked the Société de l'assurance automobile du Québec (SAAQ) to suspend his driver's license for not paying the fine even though, in the meantime, a second payment had been sent to him.

Informed by the SAAQ that his driver's license would be suspended in two weeks if he did not pay the fine, the man contacted the collection officer to get to the bottom of the mystery. The collection officer told him that he could not change his decision, saying it was too late. The citizen thus turned to the Québec Ombudsman.

The Ombudsman convinced the Trois-Rivières collection officer that the man intended to reimburse the fine based on the fact that he had already made several payments. In addition, the man could not be held responsible for the administrative foul-up that had led to the loss of the letter. The collection officer asked the SAAQ to lift the license suspension and to issue a credit for the corresponding legal fees as soon as he received the new agreement signed by the man.

The investigation also revealed that the procedure for reaching agreements varied greatly from one collection officer to another. It is thus difficult, if not impossible, for the public to make sense of them. This situation will be the subject of a full investigation in the near future.

MINISTÈRE DES RELATIONS AVEC LES CITOYENS ET DE L'IMMIGRATION

When there is a lack of adequate communication between departments, inconsistencies make their way into administrative decisions.

A man who had been divorced since 1982 sponsored his second wife, which, under normal circumstances, would not pose any problem. However, the simultaneous intervention of three departments quickly made a nightmare out of the sponsorship application.

The *Regulation respecting the selection of foreign nationals* stipulates that a sponsorship application may be turned down if, in the five years prior to the application, the person has been sentenced to pay support payment arrears. The Ministère des Relations avec les citoyens et de l'Immigration rightly considers that there is a good chance that people wishing to become sponsors, that is, to provide for the essential needs of sponsored people (accommodation, food, etc.), may not honor their commitments if they have already failed to pay support.

In this case, the man's previous spouse was receiving income security from the Ministère de l'Emploi et de la Solidarité. In 1996, the Department decided to take the man to court to force him to pay income support to his ex-spouse even though in 1987, at the time of a change of custody application, a judge had decided not to impose support payments.

No doubt poorly informed and poorly advised, the man erroneously reported that he owed support payment arrears of approximately $3,000, and a payment agreement was reached. Despite all these ups and downs, he succeeded in convincing the Department that he owed no arrears, which the Department confirmed in writing.

However, the saga did not end there. Since support payments are now collected by the Ministère du Revenu, this Department continued to claim the arrears.

The Québec Ombudsman made sure all three departments received the appropriate information, which allowed the citizen to conclude the sponsorship agreement.

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

When is a prisoner dangerous? It depends on when you ask the question. How safe is the general public?

A prisoner had a criminal record because of death threats and conjugal violence. In addition, he had failed to comply with the conditions of his parole order, suggesting serious behavioral problems.

Given his security profile, the Québec City detention center felt that an early release would be risky since he had threatened one of this victims during a previous release. The prisoner appealed the decision to the Commission des libérations conditionnelles, which sided with the detention center. He appealed the Commission's decision, and the contents of his letter were seen as a threat.

However, because of chronic overcrowding in the center, he was released a few weeks before the end of this prison term in disregard of the Commission's decision. The Commission intervened to have the center rearrest the individual while awaiting a decision as to whether criminal charges would be laid against him. The probation officer traveled to another city to pick him up and take him back to prison.

While studying the complaint, the Québec Ombudsman noted that in the space of four weeks, the prisoner had been considered dangerous, not dangerous and once again dangerous to society. He finally served out the balance of his sentence in prison. Although the past is not always foretelling of the future, authorities should be careful before releasing prisoners early, especially when they are told not to do so as was the case with the Commission. Not only did this situation throw the credibility of the Commission des libérations conditionnelles into question, it also sowed seeds of doubt about the appropriateness of certain decisions.

RÉGIE DES ASSURANCES AGRICOLES

An imprecise regulation comes into conflict with an administrative standard.

A calf producer complained to the Régie des assurances agricoles du Québec, which was refusing to pay the financial compensation stipulated in his contract because five of his calves exceeded the regulation weight. To be insurable, the live weight of grain-fed calves must be no more than 606 pounds.

The producer acknowledged that his animals exceeded this weight but added that the Régie had agreed in writing that calves with a dressed weight between 198 and 401 pounds were acceptable. Moreover, if the live weights of his animals were converted into dressed weight (conversion index), all his animals met the regulatory standard.

The Québec Ombudsman noted that Régie officials had explained in writing that since the regulatory standard based on live animal weight was not precise enough for policyholders who did not have scales and who estimated weights visually, the Régie had established an administrative standard based on the dressed weight of animals equivalent to more or less 66.1% of live weight.

The producer was thus faced with a regulation and an administrative standard. Since it is known that there are large differences between live and dressed weight between individual animals and between different breeds, the conversion index is thus not necessarily an accurate reflection of reality. As a consequence, calf carcasses weighing 401 pounds could come from calves that greatly exceeded the 606 pound live weight limit. (the weight/carcass percentage varies between 57% and 66%).

It was thus to the producer's advantage to use the administrative standard since an animal with a live weight of 612 pounds, which would be refused by the Régie, would be accepted if it had a dressed weight of 401 pounds.

Following the Québec Ombudsman's intervention, the Régie removed the reference to live weight and clarified the regulation.

3. The Québec Ombudsman Reports to The people

THE QUÉBEC OMBUDSMAN AND THE MEDIA

The Québec Ombudsman granted a number of interviews to the media this year out of a concern for openness and with a view to making his role and mission better understood of the public and the government.

In 1997–98, he received 175 requests for interviews, 40 from print media and 135 from the electronic media press. In addition, journalists quoted the Québec Ombudsman 584 times from comments at press conferences, in press releases or before parliamentary committees in explaining official positions of the Québec Ombudsman on topics investigated, or reporting on problems with laws or government programs.

This year, a number of topics caught the attention of the media, including

- The 1996–97 Annual Report
- The prescription drug insurance plan
- The R&D issue
- The collection of support payments
- The Dubreuil affair
- The Québec Ombudsman's mandate

SPEECHES BY THE QUÉBEC OMBUDSMAN

In carrying out his duties, the Québec Ombudsman attends meetings, conferences and symposia on a regular basis, and is asked to give speeches on various topics. This year, the Ombudsman addressed a number of groups, sparking discussions on what citizens expect and the difficulties they may run into when dealing with the government.

April 8, 1997:	"Le Protecteur du citoyen et la défense des droits des assistés sociaux." Meeting organized by the Regroupement des organismes communautaires
April 23, 1997:	"Inforoute et services aux citoyens : la sécurité est-elle au rendez-vous ?" Association de sécurité informatique de la région de Québec (ASIRQ)
April 25, 1997:	"Assurance-médicaments, continuité des soins entre les établissements." Association des pharmaciens des établissements de la santé du Québec
May 7, 1997:	Roundtable of the Front commun des assistés sociaux

May 30, 1997:	"Le développement de la profession, changements dans la société." Order professionnel des travailleurs sociaux du Québec
September 18, 1997:	"L'avenir d'un réseau des responsables des bureaux de plaintes." Directors of Complaints Offices, Government of Québec
September 24-25, 1997:	"Les inconvénients de l'utilisation de l'inforoute." Centre francophone de recherche sur l'informatisation des organisations
October 29, 1997:	"Débat public sur la citoyenneté et la démocratie locales." La Ligue des droits et libertés, Quebec City section
November 18, 1997:	"Inequality, Human Rights Advocacy and Peace Building." McGill University
December 1, 1997:	"Droits des personnes atteintes du SIDA." Hôpital de Rimouski
December 17, 1997:	"Ouverture, inclusion et humanisation des rapports avec les citoyens." Régie des rentes du Québec
February 20, 1998:	"Suicide et santé mentale." Suicide Action Montréal
March 16, 1998:	"Les droits des personnes handicapées et des familles." Épilepsie Mauricie–Bois-Francs

THE QUÉBEC OMBUDSMAN ON THE INTERNATIONAL SCENE

In these times of globalization, the Québec Ombudsman cannot operate in isolation.

Over the past twenty years, the number of mediators and ombudsmen has grown from 47 to 321, an increase of nearly 700%. The number of countries where they are found has nearly doubled to 89. In addition to these independent institutions, a number of public and private organizations have grown up that are analogous to ombudsmen, but that do not have an independent status.

The expansion of the institution is a result of political factors tied to the spread of democracy and increased respect for human rights. It can also be traced to the fact that the institution meets a need of both citizens and government authorities. It has reached a point of no return in the sense that as an official institution independent of government, the ombudsman has become an indispensable means of preventing and righting injustices caused by government authorities, and for promoting democracy and the spread of human rights around the globe.

Ombudsmen, who are present on every continent, now form a true international community that is providing itself with regional and international structures. The International Ombudsman Institute is playing a major role in this regard, a role that is increasing in importance with the setting up of regional constituents. The Québec Ombudsman is actively involved in this ferment and is increasingly coordinating his activities with those of regional, national and international organizations.

For several years now, the office of the Québec Ombudsman has been taking an active hand in developing the concept of the ombudsman around the world. He is recognized for his expertise and is regularly asked to provide the advice, training and technical support needed to develop new institutions. The Québec Ombudsman is regularly approached by politicians and government officials interested in knowing more about the institution of the ombudsman. He is often asked to give speeches at conferences, symposia and various other meetings.

The Québec Ombudsman is a member of the Board of Directors and is Executive Secretary of the International Ombudsman Institute (IOI). Since October 1995, he has also chaired the IOI's reform committee, which is in charge of revising the institute's by-laws and operating procedures so that it can better meet the needs of its members and the hopes raised by the spread of the institution of the ombudsman throughout the world.

Since May 1998, the Québec Ombudsman has been the chair of the new international association of ombudsmen and mediators from French-speaking jurisdictions, which was set up in Nouakchott, Mauritania, following a first meeting in Québec City in 1997.

He also assumed the co-chairmanship of the Canadian Ombudsman Association in June 1998.

THE INTERNATIONAL OMBUDSMAN INSTITUTE

The International Ombudsman Institute is a nonprofit organization made up of ombudsmen from 89 countries. Its head office is in Edmonton, Alberta, and it is attached to the Faculty of Law of the University of Alberta.

The main objectives of the Institute are to:

- promote the concept of the ombudsman and foster its development around the world;
- encourage and support research into and studies about the institution of the ombudsman;
- Make information available about the various types of ombudsmen, their actions, their interventions with governments, etc.;
- Promote, through the provision of grants and other means, the sharing of information and experiences among ombudsmen from all countries; and

➤ Organize international meetings of ombudsmen.

The Board of Directors is composed of members elected by representatives from Africa, Asia, Europe, North America, the South Pacific, Latin America and the Caribbean.

The Institute also welcomes as associate members dispute settlement organizations that do not have all the features of ombudsmen, as well as institutions, libraries and other interested groups.

To contact the Institute:

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Phone: (403) 492-3196
Fax: (403) 492-4924
Email: dcallan@law.ualberta.ca

To contact the Executive Secretary:

Bureau du Protecteur du citoyen
525 boulevard René-Lévesque Est, Suite 1.25
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Phone: (418) 644-6565
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INVOLVEMENT BY THE QUÉBEC OMBUDSMAN IN THE INTERNATIONAL OMBUDSMAN INSTITUTE

Board of Directors Meeting

The IOI's Board of Directors held its annual meeting in Copenhagen, Denmark, from October 13 through 15, 1997. Mr. Jacoby, the IOI Executive Secretary, attended and was accompanied his international issues coordinator.

The IOI Reform Committee chaired by Mr. Jacoby was charged with, among other things, continuing the review of IOI by-laws and, more specifically, proposing changes to membership criteria to take into account the widespread development of the institution of the ombudsman around the world.

Meeting with the co-chair of the International Ombudsman Institute

Mr. Jacoby, as part of his duties as IOI Executive Secretary, met with Dr. Jorge Maiorano, the Defensor del Pueblo d'Argentine and IOI co-chair. The meeting took place in Ottawa on September 9, 1997.

The next meeting of the Board of Directors will be in Islamabad in late October 1998 and will be hosted by Pakistan's Ombudsman, Justice Abdul Shakurul Salam.

THE ASSOCIATION OF OMBUDSMEN FROM FRENCH-SPEAKING COUNTRIES

In his 27th Annual Report, the Québec Ombudsman discussed the first conference of Ombudsmen from French-speaking countries held in Québec City on June 9 through 12, 1997.

Following the conference, Mr. Jacoby chaired the follow-up committee, which was also composed of Mr. Sid'Ahmed Ould Bneijara (Mauritania), General Tiémoko Marc Garango (Burkina Faso), Ms Jeanne Manomba-Kombila (Gabon), Mr. Jacques Pelletier (France) and Mr. Seydou Madani Sy (Senegal).

In accordance with the decisions made in Québec City, the committee prepared draft by-laws for the association and did organizational groundwork for the second conference, which was hosted by Mr. Bneijara in Nouakchott from May 19 to 21, 1998.

Mr. Jacoby and his international issues coordinator attended a working session of the committee in Paris from October 8 to 11, 1997. Attendees planned the next conference and examined the proposed draft by-laws for the association. The final draft was sent to members on April 2, 1998.

At the invitation of Mr. Bneijara, Mr. Jacoby and his international issues coordinator, as well as the external affairs advisor at the office of the Médiateur de la République française (French mediator), traveled to Nouakchott to prepare the second conference. The mission took place from February 8 to 11, 1998.

The Association of Ombudsmen and Mediators from French-speaking Countries was officially created in May 1998 in Mauritania, and the members elected the Board of Directors and officers. Mr. Jacoby was elected Chair of the Association, General Tiémoko Marc Garango, Vice Chair, Mr. Bernard Stasi, Secretary General and Mr. Seydou Madani Sy, Treasurer. The office of the Commissioner of Official Languages represents the Americas and Caribbean on the Board of Directors. The creation of the Association was encouraged and supported at the meeting in Nouakchott by the International Ombudsman Institute represented by its Chair, Dr. Marten Oosting, Ombudsman of the Netherlands. The Agence de la Francophonie, the French Ministère de la Coopération, the Québec Ministère des Relations internationales, the Canadian minister responsible

for the Francophonie and international cooperation, and the International Ombudsman Institute all provided generous funding for the conference.

The next conference of the Association will be held in late 1999 in Burkina Faso, at the invitation of the national mediator, General Tiémoko Marc Garango.

Mérida Conference

Mr. Jacoby was invited to Mérida, Mexico, to attend the fourth meeting of national institutions for the promotion and protection of human rights, held from November 27 to 29, 1997.

The meeting was organized by the United Nations Center for Human Rights and Mexico's National Human Rights Commission. The following themes were discussed:

Theme 1: Cooperation between national institutions for the promotion and protection of human rights

Theme 2: Vulnerable groups: fertile ground for the work of national institutions for the promotion and protection of human rights

Theme 3: Patterns of migration and national institutions for the promotion and protection of human rights, and the battle against racism and xenophobia

Theme 4: Economic, social and cultural rights: the right to development in the modern world

The United Nations Center for Human Rights and the International Ombudsman Institute established closer cooperative ties at the meeting.

25th Anniversary of the Institution of the Médiateur de la République Française (Mediator of the French Republic)

The institution of the Mediator of the French Republic celebrated its 25th anniversary this year. To mark the event, the Mediator of the French Republic, Mr. Jacques Pelletier, hosted a symposium at La Sorbonne in Paris on February 5 and 6, 1998, under the theme *Mediation: What Does the Future Hold?* It was an opportunity to examine the history of an institution serving the rule of law, to discuss what the future holds in store for it, and to take a more general look at the growing importance of mediation in societies today.

During the first morning, Mr. Jacoby was invited to take part in the debate on the development of institutional mediation in Europe and around the world. He was joined by Mr. Marten Oosting, the Chair of the International Ombudsman Institute, Mr. Seydou Madani Sy, the Mediator of the Republic

of Senegal, and Mr. Jacob Söderman, the European Mediator. The debate was chaired by Mr. Jacques Pelletier.

During his stay in France, Mr. Jacoby also met with Québec's Delegate General in Paris. On his return from Nouakchott on February 11, the Québec Ombudsman met with the Delegate General of the Agence de la Francophonie, Mr. Roger Dehaye, and the Delegate General for Legal Coopération, Ms Christine Desouches.

The Office of the Ombudsman in Haïti

The Québec Ombudsman visited Haïti from March 3 through 7, 1998, at the invitation of the Haitian Ombudsman, Dr. Louis E. Roy.

Mr. Jacoby and the Director of Communications took part in a three-day seminar organized by the United Nations' International Civilian Mission to Haiti. The main topics examined during the seminar were Developing the State of Law, Democracy, the Role of the Ombudsman and, especially, the decree creating the Office of the Haitian Ombudsman. Mr. Jacoby gave a speech on how the Québec Ombudsman carries out his duties, on the International Ombudsman Institute and on the activities of ombudsmen around the world.

During his visit, Mr. Jacoby also had a private meeting with the President of the Senate and his cabinet, and with the Speaker of the Chamber of Deputies and his cabinet. He also gave a speech before an assembly of deputies and senators, as well as a presentation to the general managers of government departments and agencies.

"Commonwealth Regional Workshop of the Caribbean Ombudsman"

As IOI Executive Secretary, Mr. Jacoby was invited by Dr. Hayden Thomas, the Ombudsman of Antigua and Barbuda, to attend the Commonwealth Regional Workshop of the Caribbean. The theme of the workshop was *Strengthening National Ombudsman and Human Rights Institutions in the Caribbean*. The workshop was held in St. John's from March 9 to 12, 1998. Mr. Jacoby, among other duties, chaired a working group examining the question of cooperation among ombudsman offices and related organizations such as government agencies in charge of human rights, NGOs, and international organizations such as IOI.

Caribbean ombudsmen decided to form a regional association. A committee was set up to prepare association by-laws. At the request of the Commonwealth Secretariat and Dr. Hayden Thomas, the Québec Ombudsman is assisting the committee.

Conference of Canadian Ombudsmen

The Assistant to the Québec Ombudsman, the General Manager of Investigations, two delegates from the office of the General Manager of Investigations, and the International Issues Coordinator attended the Conference of Canadian Ombudsmen in Regina, Saskatchewan, from September 10 to 12, 1997. The conference theme was *Ombudsmen at the Close of the '90s: Insistent Issues*. It was decided at the time to hold a special meeting in Toronto to deal with the creation of a formal association of Canadian ombudsmen. Mr. Jacoby, the General Manager of Investigations and the International Issues Coordinator attended the meeting, which was held from January 14 to 17, 1998.

In 1998, the Conference of Canadian Ombudsmen was held in Yellowknife, Northwest Territories on June 18 through 21, 1998. The theme was *Fairness and Good Governance*. Ms Judi Tutcho, the Language Commissioner, was the host. The Association of Canadian Ombudsmen was created at this conference.

3rd Meeting of the Ibero-American Federation of Ombudsmen (Lima, Peru)

In September 1998, ombudsmen from Latin America, Spain and Portugal attended the 3rd Meeting of the Ibero-American Federation of Ombudsmen. Dr. Jorge Santistevan de Noriega, the Vice Chair of the South American and Caribbean region at the International Ombudsman Institute, invited Mr. Jacoby, as Executive Director of IOI and Québec Ombudsman, to attend. The conference examined the special problems facing Latin American ombudsmen and citizens, especially as regards human rights. The status of women, government services, and aboriginal rights received particular attention from the attendees.

The Canadian Human Rights Foundation (CHRF)

The General Manager of Investigations at the Office of the Québec Ombudsman attended a roundtable on March 5 and 6, 1998, entitled *Cooperation with national institutions in developing countries: the role of Canadian know-how and resources.*

The event, which was held in Ottawa, was organized by CHRF in conjunction with the Canadian Human Rights Commission, the International Center for Human Rights and Democratic Development, and the Canadian Centre for Foreign Policy Development. The goal of the organizers was to offer a forum for attendees to discuss their experiences with national human rights institutions in developing countries and draw realistic conclusions about the challenges facing them. Special problems facing Canadian cooperation efforts were also discussed, and recommendations for future actions based on common experiences were drafted.

Human Rights Conference in Thailand

At the invitation of the Human Rights Research and Education Centre of the University of Ottawa, the Assistant to the Québec Ombudsman and the General Manager of Investigations attended the human rights conference in Bangkok, from August 16 to 24, 1997. They gave two speeches, one entitled *The Ombudsman Institution in its International and Canadian Contexts* and the other, *Functioning of the Office of the Public Protector*. The conference helped improve understanding of human rights and provided support for efforts to create an Ombudsman's office in Thailand.

Kiev Conference on Anticorruption Mechanisms

The Québec Ombudsman was invited by the World Bank Group (Economic Development Institute) to attend the conference held in Kiev, Ukraine, from November 26 through 30, 1997. The conference, entitled *National Integrity, Symposium*, examined ways to strengthen anticorruption mechanisms and to reestablish the integrity of government employees and the Ukraine government as a whole. The Director of Legal Affairs, who represented the Québec Ombudsman at the conference, took part in two workshops, one on the overarching principles of the duties of an ombudsman, and one on the Québec Ombudsman's Social Contract as a way of ensuring the integrity of the civil service. The Director of Legal Affairs also consulted with senior Ukrainian officials on the creation of a Ukrainian ombudsman's office.

WIDER DISTRIBUTION OF THE ANNUAL REPORT

The Québec Ombudsman's Annual Report is published in English and French, and in addition to its distribution in Québec and the rest of Canada, is provided to ombudsmen, libraries and associations around the world.

The Social Contract proposed by the Québec Ombudsman to improve relations between the Government and citizens is available in four languages: English, French, Spanish, and Thai.

4. A Few Figures

The Budget of the Québec Ombudsman

Comparative Expenditure Statement for the 1997 and 1998 Fiscal Years Ended March 31

	1996-97	1997-98
Staff		
Regular and casual employees	3,799,954	3,735,631
Employer contributions	21,068	367,797
Pensions for former ombudsmen and assistants	72,050	72,050
Total	3,893,072	4,175,478
Operations		
Transportation and communications	382,477	390,008
Professionnal and administrative services	210,550	163,266
Maintenance and repairs	8,793	86,445
Rent and rental fees	508,365	530,620
Goods and supplies	60,509	72,765
Matérial and equipment	35,023	45,759
Other expenditures	2,870	4,045
Total	1,208,587	1,292,908
Capitalization		
Matérial et equipment	21,477	62,909
Total	21,477	62,909
Grand total	5,123,136	5,531,295[1]

[1] The increase in expenditures is mainly due to the transfer for accounting purposes of employer contributions and the cost of moving the Québec Ombudsman's offices.

Québec Ombudsman Staff

Positions	1996-97	1997-98
Detached	2	2
Senior managers	5	4
Middle managers	3	8
Professionals	28	30
Technicians	19	15
Support staff	20	18
Casual employees - full-time	5	4
Casual employees - part-time	0	0
Total employees / year	**82**	**81**

List of Québec Ombudsman Staff for the 1997-98 Fiscal Year

Pierre Alarie
Lydia Assayag
Jacques L. Auger
Claire Beaupré
Marcel Bégin
Claude Bélanger
Catherine Bérard
France Blackburn
Yves M. Bolduc
Dominique Bouchard
Annie Boulanger
Josée Boulianne
Andrée Boutin
Jo-Anne Bussières
Johanne C. Desjardins
Mariette Cailloux
Lyne Chassé
Sylvie Clément
Georgette Couture
Lise Couture
André Daguerre
Mario Demers
Lyne Deschênes
Diane Dubuc Hickey
Francine Dufour
Louise Falardeau
Sonia Fontaine
Jean-Claude Fortier
Berthe Fournier
Denise Fournier
Andrée Gagnon
Lucie Gagnon
Suzanne Gagnon
Christine Gauguin
Claire Gendron
Pierre-Paul Gervais
Dorys Gosselin
Robert Guay
Frances Hudon Szigeti
Daniel Jacoby
Denise Labelle
Serge Laberge
Michel Labonté
Martine Laliberté
Micheline Lamy
Claire Langlois
Denis Langlois
Nathalie Laquerre
Francine Larouche
Francyne Larouche
Lucie Lavoie
Michèle Lessard
Lucie Levac
Marlène Lirette
Micheline Lynch
Guy MacDonald
Hélène Martin
Lise Mayer
Micheline McNicoll
Jacques Meunier
Pierre Morin
Carmen Morissette
Lorraine Nadeau
Margaret Normand
Egidio Nunez
Manon Ostiguy
Guy Pagé
Louise Paquette
Marie-José Péloquin
Suzanne Picard
Diane Pilon
Lucie Poulin
France Prévost
Anne-Marie Racette
Sophie Rioux
Patrick Robardet
Manon Robitaille
Hélène Roux
Daniel Samson
André Sasseville
Monique Sévigny
Gaétane Sinclair
Gilles St-Hilaire
Linda Sweeney
Suzanne Talbot
Armenia Teixeira
Mona Tremblay
Sylvie Turcotte
Georges Wentser

Enforcement of the *Act respecting the protection of non-smokers*

During the 1997-98 fiscal year, the Québec Ombudsman enforced the *Act respecting the protection of non-smokers*. There were no written complaints, and no notices of contravention were issued.

Statistics

NOTICE

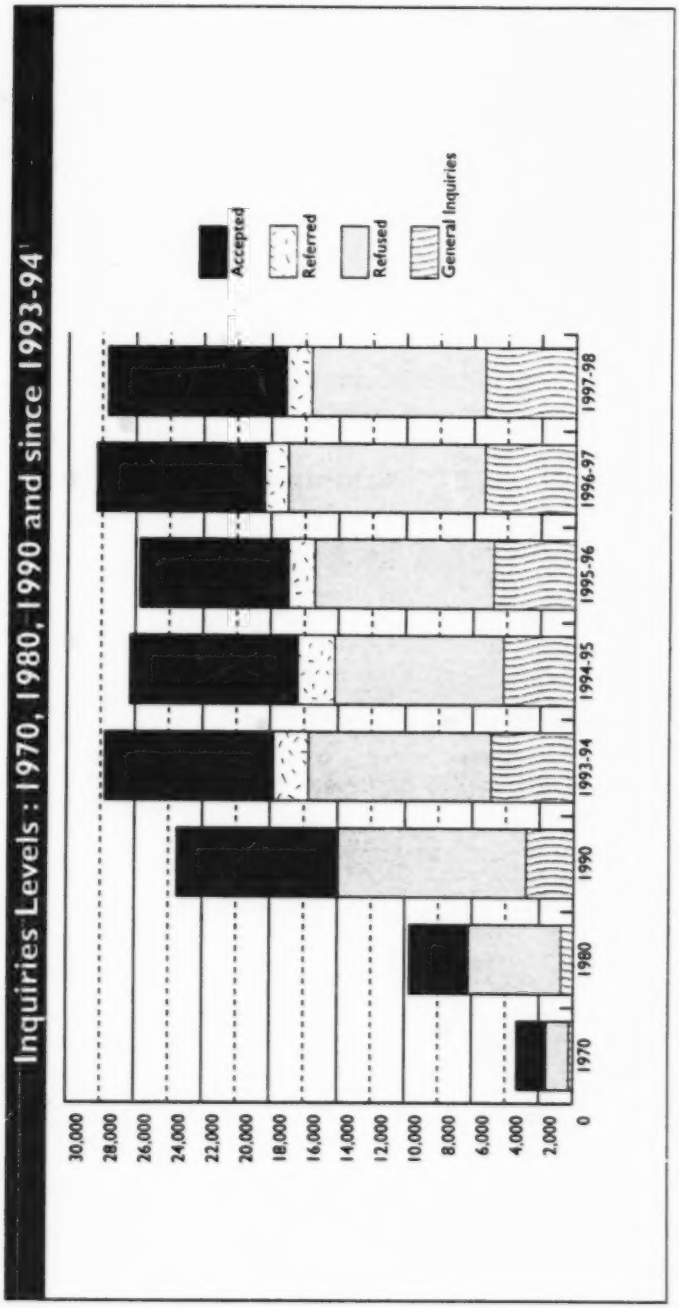
Figure 1 shows the number of inquiries to the Québec Ombudsman since the creation of the institution.

Tables 1 through 4 list only inquiries received from April 1 to March 31, for 1996-97 and 1997-98.

Tables 5 and 7, and Figures 2 and 3, present data for 1997-98; inquiries still being processed as at April 1, 1997, are in addition to inquiries received during 1997-98.

Table 6 presents data for 1996-97 and 1997-98; investigations begun before April 1, 1997 and 1998 are included.

Figure I



¹ The procedure for referred investigations was introduced in 1991-92.

Table 1

Origin of Inquiries Received in 1996-97 and 1997-98

Region	Population[1]		1996-97		1997-98	
Abitibi–Témiscamingue (08)	157,966	2.1 %	593	2.1 %	501	1.8 %
Bas-Saint-Laurent (01)	208,535	2.8 %	910	3.2 %	921	3.3 %
Centre-du-Québec (17)	221,702	3.0 %	..[2]	.. %	835	3.0 %
Chaudière–Appalaches (12)	390,098	5.3 %	1,526	5.4 %	1,241	4.5 %
Côte-Nord (09)	106,532	1.4 %	433	1.5 %	369	1.3 %
Estrie (05)	289,645	3.9 %	1,086	3.8 %	951	3.4 %
Gaspésie–Îles-de-la-Madeleine (11)	107,005	1.4 %	386	1.4 %	344	1.2 %
Lanaudière (14)	394,684	5.3 %	1,042	3.7 %	1,079	3.9 %
Laurentides (15)	453,276	6.1 %	1,694	6.0 %	1,715	6.2 %
Laval (13)	350,401	4.7 %	971	3.4 %	946	3.4 %
Mauricie (04)	267,771	3.6 %	1,945	6.9 %	914	3.3 %
Montérégie (16)	1,326,265	17.9 %	3,625	12.8 %	3,241	11.7 %
Montréal (06)	1,833,085	24.7 %	7,474	26.4 %	8,293	30.0 %
Nord-du-Québec (10)	37,476	0.5 %	58	0.2 %	36	0.1 %
Outaouais (07)	319,054	4.3 %	795	2.8 %	784	2.8 %
Québec (03)	659,858	8.9 %	4,676	16.5 %	4,437	16.0 %
Saguenay–Lac-Saint-Jean (02)	296,537	4.0 %	951	3.4 %	897	3.2 %
Extérieur du Québec	...	...	155	0.5 %	143	0.5 %
Inconnue	...	...	13	-- %	23	0.1 %
Total	**7,419,890**		**28,333**		**27,670**	

[1] Statistics Canada, 1997 Population Estimate

[2] Administrative region that did not exist in 1996-97; data included in the Mauricie region.

Table 2

Processing Times for Inquiries Received in 1996-97 and 1997-98				
	1996-97		1997-98	
General Inquiries				
The same day	4,126	77%	4,072	76%
Within a week	5,249	98%	5,156	96%
Total	5,333		5,347	
Investigations Refused				
The same day	9,221	79%	8,207	80%
Within a week	11,318	97%	10,006	97%
Within a month	11,557	99%	10,218	99%
Within three months	11,654	99%	10,273	99%
Total	11,672		10,294	
Investigations Referred	1,401	...	1,492	...
Investigations Interrupted and Complaints Withdrawn by Citizens	1,404	...	1,755	...
Investigations Completed				
Within a week	4,613	63%	5,065	65%
Within a month	5,936	82%	6,260	81%
Within three months	6,880	95%	7,218	93%
Within six months	7,178	99%	7,612	98%
Total	7,270		7,742	
Investigations Ongoing at the End of the Fiscal Year	1,253	...	1,040	...
Grand Total	**28,333**		**27,670**	

Table 3

General Inquiries by Sector in 1996-97 and 1997-98				
	1996-97		1997-98	
Government of Québec departments and agencies	1,766	33%	1,863	35%
Government organizations not under the juridiction of the Québec Ombudsman	247	5%	132	3%
School system	53	1%	41	1%
Health and social service system	150	3%	151	3%
Municipalities	206	4%	269	5%
Federal departments and agencies, and those of other provinces	232	4%	238	4%
Private sector	2,666	50%	2,642	49%
Other	13	--	11	--
Total	**5,333**		**5,347**	

Table 4

Reasons for Turning Away Complaints in 1996-97 and 1997-98				
	1996-97		1997-98	
Government organizations not under the jurisdiction of the Québec Ombudsman	1,017	9%	1,014	10%
School system	231	2%	170	1%
Health and social service system	782	7%	706	7%
Municipalities	870	7%	694	7%
Federal departments and agencies, and those of other provinces	1,034	9%	915	9%
Private sector	4,147	36%	3,199	31%
Politicians and judges	493	4%	512	5%
Other adequate recourse available	1,072	9%	1,159	11%
Intervention deemed unnecessary	1,463	12%	1,642	16%
Other	563	5%	283	3%
Total	**11,672**		**10,294**	

Table 5

Departments and Agencies That Were the Subject of Inquiries in 1997-98[1]

	Unsubstantiated Complaints	Substantiated Complaints	Other Inquiries[2]	Ongoing	Total
Board (Commissions)					
Commission administrative des régimes de retraite et d'assurances	83	135	85	17	320
Commission d'accès à l'information	13	4	8	9	34
Commission d'appel en matière de lésions professionnelles	9	-	89	9	107
Commission de la fonction publique	5	2	6	3	16
Commission de la santé et de la sécurité du travail	313	127	955	188	1,583
Commission de protection du territoire agricole du Québec	6	1	13	2	22
Commission des affaires sociales	23	4	83	7	117
Commission des normes du travail	33	11	33	14	91
Commission des transports du Québec	2	-	6	-	8
Commission des valeurs mobilières du Québec	3	3	5	2	13
Commission municipale du Québec	1	1	3	1	6
Commission québécoise des libérations conditionnelles	14	3	24	2	43
Boards (Régies)					
Régie de la sécurité dans les sports du Québec	1	-	-	-	1
Régie de l'assurance-maladie du Québec	176	221	75	67	539
Régie des alcools, des courses et des jeux	8	6	19	3	36
Régie des assurances agricoles du Québec	6	4	5	5	20
Régie des marchés agricoles et alimentaires du Québec	2	1	-	1	4
Régie des rentes du Québec	146	30	269	39	484
Régie du bâtiment du Québec	11	3	22	5	41
Régie du cinéma	-	-	-	1	1
Régie du gaz naturel	-	-	1	-	1
Régie du logement	69	5	152	6	232
Bureaus					
Office de la langue française	1	1	6	3	11
Office de la protection du consommateur	14	3	15	4	36
Office des personnes handicapées du Québec	4	3	5	3	15
Office des professions du Québec	9	-	7	2	18
Commissioners					
Police Ethics commissioner	2	1	15	4	22
Electricity Complaints Commissioner	-	-	13	-	13
Committees					
Comité de déontologie policière	3	-	4	1	8
Conseils					
Conseil de la magistrature	-	-	2	-	2
Conseil de la science et de la technologie	-	-	-	1	1
Conseil permanent de la jeunesse	-	-	-	1	1
Conseil supérieur de l'éducation	1	-	-	-	1
Corporations					
Société d'habitation du Québec	22	6	20	2	50
Société de développement industriel du Québec	2	-	1	2	5
Société de financement agricole	3	2	-	3	8
Société de l'assurance automobile du Québec	530	123	631	146	1,430

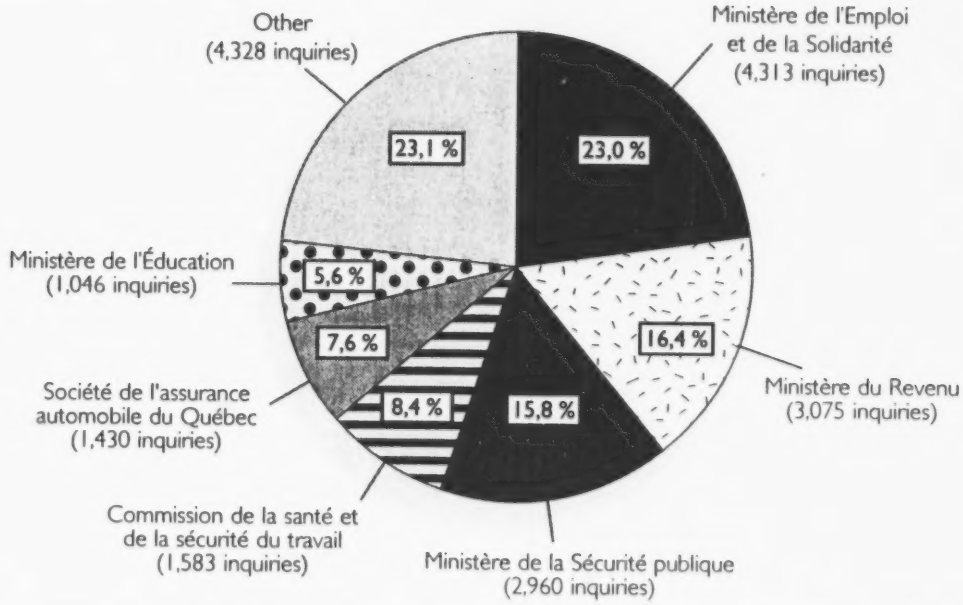
Departments and Agencies That Were the Subject of Inquiries in 1997-98[1]

	Unsubstantiated Complaints	Substantiated Complaints	Other Inquiries[2]	Ongoing	Total
Departments					
Affaires municipales	5	2	28	2	37
Agriculture, Pêcheries et Alimentation	12	10	10	5	37
Assemblée nationale	-	-	1	-	1
Conseil du trésor (Secrétariat du)	5	2	12	7	26
Conseil exécutif	1	-	-	1	2
Culture et Communications	2	2	5	2	11
Éducation	383	213	298	152	1,046
Emploi et Solidarité	1,870	225	1,967	251	4,313
Environnement et Faune	39	21	57	23	140
Famille et Enfance	19	16	29	19	83
Finances	4	5	8	-	17
Industrie, Commerce, Science et Technologie	3	-	2	2	7
Justice	149	41	219	51	460
Relations avec les citoyens et Immigration	68	35	352	28	483
Relations internationales	-	-	2	1	3
Ressources naturelles	11	3	19	5	38
Revenu	834	736	1,169	336	3,075
Santé et Services sociaux	24	3	57	29	113
Sécurité publique	914	422	1,298	326	2,960
Transports	16	5	44	11	76
Travail	12	4	19	-	35
Institutions					
Public Curator	75	48	77	65	265
Inspector General of Financial Institutions	24	84	13	8	129
Institut de tourisme et d'hôtellerie du Québec	-	-	1	3	4
Auditor General	-	-	1	-	1
Offices					
Bureau de révision de l'évaluation foncière du Québec	1	-	2	1	4
Tribunals					
Tribunal administratif du Québec	-	-	-	1	1
Tribunal d'appel en matière de protection du territoire agricole	3	3	3	1	10
Tribunal des professions	1	-	-	-	1
Tribunal du travail	-	-	3	-	3
Other[3]	1	-	9	4	14
Total	5,991	2,580	8,277	1,887	18,735

[1] Including inquiries received prior to April 1, 1997.
[2] General inquiries; investigations referred, refused or interrupted; and complaints withdraw by citizens.
[3] Inquiries not attribuate to an organization.

Figure 2

Main Departments and Agencies Inquired About in 1997-98[1]



[1] Inquiries received before April 1, 1997, are included.

Table 6

Main Causes of Substantiated Complaints in 1996-97 and 1997-98[1]

	1996-97		1997-98	
Abuse of power	26	1%	3	--
Unreasonable or unfair actions	566	24%	403	16%
Actions no in compliance with laws, regulations or guidelines	199	8%	245	10%
Reprehensible behavior or attitude	41	2%	40	2%
Unreasonable delays	386	16%	624	24%
Factual errors	118	5%	129	5%
Services no available	525	23%	473	18%
Inconsistencies	29	1%	78	3%
Inadequate information	97	4%	141	5%
Negligence or inaction	150	6%	190	7%
Other	222	10%	254	10%
Total	**2,359**		**2,580**	

[1] Including inquiries begun before April1, 1996-97 and 1997-98.

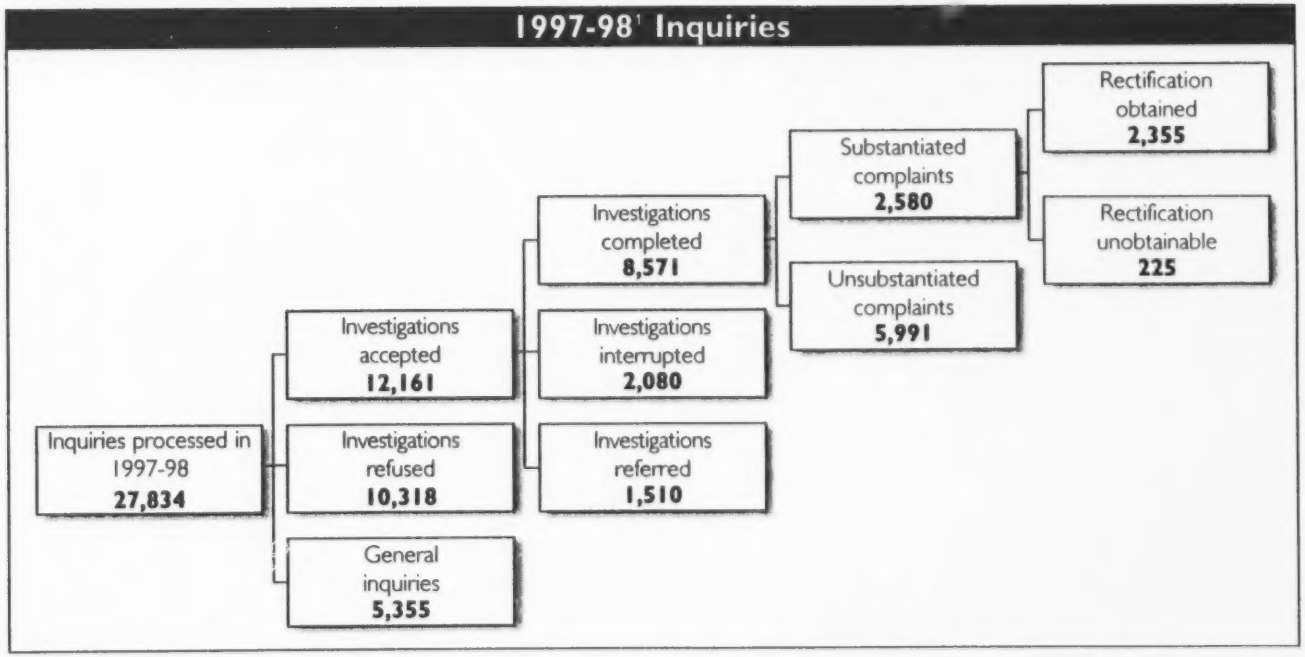
Table 7

Substantiated Complaints in 1997-98[1]

	Complaints Investigated	Substantied Complaints	Rate of Substantiated Complaints
Inspector General of Financial Institutions	108	84	78%
Commission administrative des régimes de retraite et d'assurances	218	135	62%
Régie de l'assurance-maladie du Québec	397	221	56%
Ministère du Revenu	1,570	736	47%
Ministère de la Famille et de l'Enfance	35	16	46%
Ministère de l'Agriculture, des Pêcheries et de l'Alimentation	22	10	45%
Public Curator	123	48	39%
Ministère de l'Éducation	596	213	36%
Ministère de l'Environnement et de la Faune	60	21	35%
Ministère des Relations avec les citoyens et de l'Immigration	103	35	34%
Ministère de la Sécurité publique	1,336	422	32%
Commission de la santé et de la sécurité du travail	440	127	29%
Commission des normes du travail	44	11	25%
Ministère des Transports	21	5	24%
Ministère de la Justice	190	41	22%
Société d'habitation du Québec	28	6	21%
Société de l'assurance automobile du Québec	653	123	19%
Régie des rentes du Québec	176	30	17%
Commission des affaires sociales	27	4	15%
Ministère de la Santé et des Services sociaux	27	3	11%
Ministère de l'Emploi et de la Solidarité	2,095	225	11%
Régie du logement	74	5	7%

[1] Departments and agencies that were investigated at least 20 times.

Figure 3



[1] Including complaints received before April 1, 1997.

HOW TO CONTACT THE QUÉBEC OMBUDSMAN

It is best to write to the Québec Ombudsman
if lodging a complaint.

Québec City (Main Office)

525, boulevard René-Lévesque Est
Bureau 1.25
Québec (Québec) G1R 5Y4

Montréal

1, rue Notre-Dame Est
Bureau 11.40
Montréal (Québec) H2Y 1B6

You may also contact the Québec Ombudsman
by phone.

Québec City (Main Office)

Phone: (418) 643-2688
Toll free: 1-800-463-5070
Fax: (418) 643-8759

Montréal

Phone: (514) 873-2032
Toll free: 1-800-361-5804
Fax: (514) 873-4640

Website:
http://www.ombuds.gouv.ca.ca

Email:
protecteur.citoyen@ombuds.gouv.qc.ca

Annex

THE QUÉBEC OMBUDSMAN'S SOCIAL CONTRACT

Modern governments must express their commitment to acting efficiently, fairly and democratically in everything they do. The Québec Ombudsman has listed guidelines below that should enable the government to measure its performance in achieving these imperatives, and to review and reorient practices and procedures that fail to measure up.

Ensuring Government Transparency

1.1 Inform citizens of decisions that concern them, taking care to explain the reasons for the decisions in terms that can be understood.

1.2 Give citizens all the information they need in a timely manner.

1.3 Ensure, where applicable, that citizens clearly understand the information conveyed to them.

1.4 Indicate clearly to clients the rights and recourse available to them with respect to an administrative decision, including recourse to the Québec Ombudsman or to any other public entity concerned with the protection of rights.

1.5 Promote the publication of government information, and consider secrets a real exception to the general rule.

1.6 Consult the client group concerned when government programs are developed and implemented, as well as when changes are made to these programs.

1.7 Get the opinion of people who are representatives of the client group when preparing forms and information folders, and use simple, everyday language in the wording of these documents.

Promoting Access to Government Services

2.1 Implement reception and information services promoting a personalized and respectful approach to dealing with individuals, and one that also takes into account the limitations of older or handicapped client groups, as well as linguistic barriers.

2.2 Plan telephone services in such a way as to be able to meet demand as efficiently as possible, so that citizens are not faced with overloaded telephone lines.

2.3 Only use interactive voice response systems when these can better serve clients and provide more complete information.

2.4 Ensure that office setup respects the public's right to privacy in facilities where public services are delivered.

2.5 Ensure that office setup is not a barrier to government services for people with physical disabilities.

2.6 In determining office hours, make allowance for new social and family realities.

2.7 Seek to provide one-stop service and, as needed, consider amalgamating administrative divisions if this can contribute to improving client accessibility and service quality. On the other hand, do not at all costs maintain an operation or unit of questionable relevance.

Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable

3.1 Abide by special statues and regulations as well as regular legislation.

3.2 Promote respect for basic rights and freedoms in each action that is taken.

3.3 When the decision-making process is discretionary, establish a framework for decisions using criteria and measures that allow their objective application.

3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.

3.5 Employ a decision-making process that prevents arbitrary decisions or abuse of power.

3.6 Have the means to act, where applicable, on a purely equitable basis, when exceptional circumstances so require.

3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, but rather emphasize an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.

Respecting the Rules of Natural Justice

4.1 Avoid making decisions without giving citizens the chance to express their point of view or the opportunity to provide all relevant information.

4.2 Take the initiative to ask citizens for the paperwork or details missing from the applications or claims they make rather than turning down or holding up their applications without further explanation.

4.3 Help a citizen making a claim to present a complete file, so that the decision handed down reflects all relevant information and circumstances.

4.4 Reject all forms of partiality in decisions that are made and any pursuit of illegitimate objectives. Avoid all conflicts of interest.

4.5 Avoid all forms of discrimination or unequal treatment.

Serving Citizens

5.1 Always respect the spirit of the law when designing, implementing or updating a government program. According to the *Interpretation Act*, a law is presumed to eliminate prejudice.

5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency.

5.3 When developing a program, reduce as much as possible the risk of flaws and deficiencies that arise from poor administration.

5.4 Allocate resources so as to ensure that citizens are not the first and only victims of budget cuts.

Understanding Citizens and Making Their Lives Easier

6.1 Survey client group in order to establish who uses the service and what their needs and expectations are.

6.2 Create user committees.

6.3 Take into account the reasons for client dissatisfaction when changing a service or program. Do not base change solely on the dissatisfaction of personnel.

6.4 Set up advisory committees made up of employees who are in direct contact with users.

6.5 Eliminate unnecessary procedures and formalities as well as all unnecessary paperwork.

Respecting Personal Dignity

7.1 Avoid treating citizens like numbers. Try to understand their special needs and why they may be vulnerable.

7.2 Makes relations with citizens as human and personal as possible.

7.3 Avoid treating citizens who claim a service or benefit as if they were seeking privileges and not rights.

7.4 Do unto others as you would have them do unto you.

7.5 When replying to inquiries, direct citizens to the appropriate service rather than referring them to various resources without knowing which one will provide a useful answer.

7.6 When it is necessary to develop systems for the detection and prevention of fraud, ensure that the rights of citizens are respected and systematically discard any detection methods that are ineffectual or unnecessarily intrusive.

7.7 Avoid excessive administrative rigidity in all dealings with citizens, while remaining thorough.

7.8 Take into consideration the aspirations, characteristics and conditions of native peoples and cultural communities.

Doing the Utmost to Act Responsibly

8.1 Provide an opportunity for decisions to be reviewed or appealed.

8.2 Establish a complaints-handling office as independent as possible from the decision-maker whose decisions are being examined.

8.3 Establish, as needed, conciliation or mediation mechanisms.

8.4 Keep promises made to citizens.

8.5 Avoid watering down responsibilities by systematically referring them to another hierarchical level or administrative division.

8.6 Provide services and information, and convey decisions, within a reasonable length of time.

8.7 Continuously seek to shorten waiting times.

8.8 Intervene rather than stand by when other employees are responsible for a delay, and encourage them to act with diligence.

8.9 Determine the real causes of a deficiency or act of negligence, so as to avoid systematically using the excuse of budget cuts to justify shortcomings.

8.10 Draw up a detailed code of ethics that is practical and not limited to generalities and wishful thinking; make clients aware of the code.

8.11 Never consider a client's dissatisfaction as mere criticism, but rather as useful feedback that will make improvement possible.

8.12 Make clients feel important, and recognize work that has been well done by employees.

8.13 Bring decision-making as close as possible to clients.